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(24,135)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 423.

ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

C. L. DE FUENTES, W. L. FOSTER, AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Bill of Complaint.*

Filed February 10th, 1904.

In the Circuit Court of the United States for the Eastern District of Louisiana.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, Commissioners and Members of the Railroad Commission of Louisiana, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

Your orator, the Illinois Central Railroad Company, a Railroad Corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, and duly qualified as a railroad corporation within and under the laws of the State of Louisiana, brings this, its bill of complaint, against C. L. De Fuentes, W. L. Foster and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana, who are residents and citizens of the State of Louisiana, and as such members of the Railroad Commission of Louisiana, have their domicile at Baton Rouge, in the Eastern District of Louisiana.

And thereupon your orator represents and says:

That your orator is a railroad corporation duly created, organized and existing under and by virtue of the laws of the State of Illinois, and having its principal office at Chicago, in said State of Illinois, and is a citizen and resident of the said State of Illinos, that your orator is duly qualified as a railroad corporation to do business in the State of Louisiana; that Oliver M. Dunn is the duly qualified Agent of your orator; upon whom service of citation may be made in the State of Louisiana; that the said C. L. De Fuentes, W. L. Foster and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana, and each of them, are citizens and residents of the State of Louisiana, and of the Eastern District thereof.

2 Your orator further represents unto your Honors that it is a common carrier of passengers and freight, and as such owns or controls maintains and operates a line of railroad in the State of Louisiana, said line of railroad in the said State being, to-wit, eighty-seven and seventy-four hundredths miles in length, and passing through the Parishes of Orleans, Jefferson, St. Charles, St. John The Baptist and Tangipahoa; that as such common carrier your orator also operates a line of railroad which begins at Chicago, in the State of Illinois, and traverses the following States, viz: Illinois, Indiana, Wisconsin, Minnesota, Iowa, Nebraska, South

Dakota, Missouri, Kentucky, Tennessee, Mississippi and Louisiana, all of which forms a complete line and system of railroad known and designated as the Illinois Central Railroad.

Your orator further represents that in order to handle and properly care for large quantities of freight brought by it to its terminal, the City of New Orleans, for delivery there and for exportation, it has, after obtaining the consent of the proper governing authorities provided itself, at a cost exceeding one million dollars, in the said City of New Orleans, with the proper and necessary terminal facilities consisting of switch and side tracks, warehouses, sheds, wharves and yards, and that without said terminal facilities your orator cannot conduct its business and discharge its duties to those who ship by its line of railway.

Your orator further represents that by the Constitution of Louisiana, adopted in the year A. D., 1898, the Railroad Commission of Louisiana was created to regulate rates and charges of railroad companies and other companies, and to prevent unjust discrimination, and to have other powers and duties, as will more fully appear by a copy of said Constitution, to which your orator prays leave to refer upon hearing hereof; that the said Constitution contains among others a provision as follows:

"Article 284. The power and authority is hereby vested in the Commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the
3 different railroads steamboat and telegraph lines of this State, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the Commission to do so in special cases, to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The Commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts, required or authorized by these provisions. They shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers; to

take testimony under commission, and to punish for contempt, as fully as is provided by law for the District Courts."

Said Constitution also contains the following provision:

"Article 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate, or other device, shall intentionally charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders or decisions of said Commission, such railroad, steamboat or other water craft, express, telegraph, telephone or other company shall forfeit and pay to the State not less than One Hundred Dollars, nor more than Five Thousand Dollars, to be recovered before any Court of competent jurisdiction, at the suit of said Commission, at the domicile of the Commission, or of the Company, or at the place where the complaint arises, at the option of the Commission, provided, that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, as provided for in Article 285 of this Constitution, no fine or penalty for disobedience thereto or disregard thereof shall be incurred until after said contestation shall have been finally decided by the Courts, and then only for acts subsequently committed.

The power of the Commission shall affect only the transportation of passengers, freight, express matter, and telephone and telegraph messages, between points within this State, and the use of such instruments within this State."

Your orator further represents that pursuant to the said provisions of said Constitution, said C. L. De Fuentes, W. L. Foster and R. N. Sims were duly elected Commissioners and members of the Railroad Commission of Louisiana; thereafter, they and each of them qualified and assumed and entered upon the duties as Commissioners and members of the Railroad Commission of Louisiana; that at all times thereafter, prior to the first day of April, 1901, said C. L. De Fuentes, W. L. Foster and R. N. Sims continued in office, and
4 to act as such Commissioners and members of the Railroad Commission of Louisiana; that said R. N. Sims resigned his office as a member of said Railroad Commission of Louisiana, on April 1st, 1901, and Overton Cade was duly appointed as his successor; that at all times subsequent to the first day of April, A. D. 1901, said C. L. De Fuentes, W. L. Foster and Overton Cade have constituted the said Railroad Commission of Louisiana.

Your orator further represents that, to-wit: on the 7th day of August, 1903, said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and members of the Railroad Commission of Louisiana, adopted Rule or Order No. 295, which rule or order is in the words and figures following, to-wit:

"Railroad Commission of Louisiana.

Order No. 295.

No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.

All tariffs for the "service" of switching cars in the State of Louisiana, shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and charges in rates, will also apply to switching charges.

By order of the Commission.

Baton Rouge, La., August 8, 1903.

C. L. DE FUENTES, *Chairman:*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

Attest:
A true copy.
[SEAL.] W. M. BARROW, *Secretary.*"

The above order was duly promulgated in the Official Journal, at Baton Rouge on August 11th, 1903.

On or about August 13th, 1903, your orator, through its proper officer, protested against the adoption of said Order Number 295, by the said Railroad Commission and requested a rehearing thereon, in order that an opportunity might be afforded your orator to argue the matter fully before said rule 295 became effective. The Commission agreed to hear argument on October 2nd, 1903, at New Orleans, and on that day the question was fully argued before it, and taken under advisement. On December 16, 1903 the said Commission refused a rehearing, thus leaving said Order No. 295 in full force and effect, as will more fully appear on and by the records of said Railroad Commission, to which for greater
5 certainty your orator prays leave to refer.

Your orator further represents that if the order of the said Commission, heretofore entered on August 7th, 1903, as aforesaid, is allowed to stand and is enforced, your orator will be deprived of the privilege of entering into just, reasonable and legal contracts relative to its said property, and will be compelled, against its will, and in consideration of a small switching charge, to allow other railroad companies, its competitors in the City of New Orleans, the use and benefit of its yards, switches, and extensive terminal facilities, and to employ its said property to extend the terminals of other railroads in the City of New Orleans to enable them to receive or deliver freight beyond their lines and depots; and it will be forced to carry freight loaded into cars of other companies at points from which it

has provided facilities of its own for carrying such freight at the same rates, and in the same time, and, while deprived of the tariff to be collected for carrying such freight, it will be compelled to allow the cars of said other railroad companies so loaded to occupy its yards and storage tracks, and remain there while being unloaded, the result being that facilities which orator has provided at a very large cost, to handle its own business properly and economically, will be turned over to its competitors, and often to such an extent as to preclude orator from carrying out its obligations to its patrons and from handling its business promptly and economically. That your orator will thus be deprived of its property without due process of law in violation of the fourteenth amendment to the constitution of the United States.

Your orator further represents that if the order of the said Railroad Commission heretofore entered on to-wit August 7, 1903, is allowed to stand and is enforced, your orator will be denied the equal protection of the law guaranteed to it by section 1 of the fourteenth amendment to the constitution of the United States.

Your orator further represents that said order No. 295 is illegal, null and void because beyond the powers conferred upon said Commission by the said constitution of the State of Louisiana which created it and conferred upon it all the powers it possesses; because it is arbitrary and unreasonable, and an unconstitutional exercise of legislative power, and because it is oppressive in its operation upon orator and seeks, without warrant or authority of law, to com-
6 pel orator to devote its yards and terminal facilities to other purposes than the handling of its own business.

Your orator further represents that if the order of the said Railroad Commission heretofore entered on August 7, 1903, is allowed to stand and be enforced it will impair the obligation of the contracts under which you- orator expended large sums of money in providing itself with terminal facilities as aforesaid, contrary to and in violation of Section 10 of Article one of the Constitution of the United States.

Your orator further shows that said Order No. 295 is in violation of the third section of an Act of Congress of the United States, known as "An Act to regulate Commerce", passed February 4th, 1887, and amendments thereto.

Your orator further shows that under section 8 Clause 3 of the Constitution of the United States and the Act to Regulate Commerce, passed February 4, 1887, and amendments thereto, the United States have assumed, and are exercising jurisdiction upon all matters relating to the regulation of interstate commerce; that the cars affected by Order No. 295 are, at the time such order operates upon them, engaged in interstate commerce, that their contents are, at the time such order operates upon them, interstate commerce, and that such order, if carried into effect will be a regulation of interstate commerce and an infringement upon the jurisdiction of the United States, which has the exclusive right to regulate the same, and that for this reason it is in violation of the constitution and laws of the United States.

Your orator further represents that in and by said Constitution of the State of Louisiana it is provided that if any railroad shall violate any of the charges, rates or orders of said Commission, such railroad Company shall forfeit and pay to the State not less than One Hundred Dollars, nor more than Five Thousand Dollars, to be recovered in the manner therein provided; that your orator believes that until an order is entered herein restraining the said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, from enforcing said order, your orator will be subjected to numerous suits by the said Railroad Commission of Louisiana for the collection and forfeiture of from One Hundred Dollars to Five Thousand Dollars, and your orator will thereby be subjected to a multiplicity of suits.

Your orator further represents that the controversy in this action is between citizens of different states, and that the amount in controversy herein exceeds the sum of Five Thousand Dollars,
7 exclusive of interests and costs.

Your orator further represents that a question is involved herein arising under the Constitution and laws of the United States, as will appear by the allegations in the bill of complaint hereinbefore set forth, and that the said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, to the great detriment and irreparable injury of the property rights of your orator, are undertaking to arbitrarily compel your orator to adopt and put in force the above order, which will deprive your orator of its property and property rights, without due process of law.

Your orator further represents that unless immediately restrained by the orders of this Honorable Court, the penalties hereinbefore referred to will be undertaken, as your orator believes, to be enforced against your orator, on account of the failure of your orator to put in force the unreasonable and unjust order so promulgated by the said defendants, as hereinbefore set forth.

In consideration whereof, and for as much as your orator is remediless at and by the strict rules of the common law, and relievable only as a court of equity, wherein matters of this kind are properly cognizable, your orator therefore, prays that the said defendants C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, be enjoined and restrained from in any manner enforcing, or attempting to enforce the Order No. 295 heretofore entered on the 7th day of August 1903, and that until a hearing herein a temporary injunction and restraining order of like tenor and effect as the injunction above prayed for, be issued against the defendants, said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, and that your orator may have such other and further relief in the premises as the case may require, and to this Court may seem meet.

And now may it please your Honors to grant unto your orator a writ of subpœna of the United States of America, to be issued out of

and under the seal of this Honorable Court, directed to the
8 said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and to each of them, defendants herein, therein and thereby commanding them, and each of them, to be and appear at a day certain, and under certain penalty, therein to be expressed, before this Honorable Court, and there to answer, but not under oath (their answer under oath being hereby expressly waived) all and singular the premises, and to stand to and abide by and perform such orders, directions and decrees as may be made against them, or either of them, in the premises as shall seem meet and agreeable to equity and good conscience.

And your orator as in duty bound will ever pray, etc.

(Signed) HUNTER C. LEAKE,
" GUSTAVE LEMLE,
" THOS. J. KERNAN,
Solicitors for Complainant.

(Signed) J. M. DICKINSON,
Of Counsel.

9 UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

Hunter C. Leake, being first duly sworn, on oath, deposes and says: that he is one of the Solicitors and Counsel for the Complainant in the above and foregoing bill of complaint, and that he knows the contents thereof; that the allegations thereof are true in substance and effect, except to those matters and things therein stated to be upon information and belief, and as to such matters and things therein stated to be upon information and belief, this affiant believes them to be true.

That the reason this verification is not made by the complainant, the Illinois Central Railroad Company, is that the Complainant is a corporation of the State of Illinois, having its principal office in the City of Chicago in the State of Illinois, and that no officer, or director, other than affiant, competent to make this verification on behalf of said Complainant, is within this jurisdiction.

(Signed) HUNTER C. LEAKE.

Subscribed and sworn to before me this 9th day of January, A. D. 1904.

[SEAL.] (Signed) M. C. SONIAT, *Not. Pub.*

Let the said Defendants show cause before this Court at New Orleans La., on Saturday February 20, 1904 at 11 A. M. why a preliminary injunction should not issue as herein prayed for.

Done and signed at New Orleans, La. on this the 11th day of February 1904.

(Signed) CHARLES PARLANGE,
U. S. Judge.

10 *Answer of Defendants.*

Filed October 6th, 1904.

In the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana.

Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
versus
C. L. DE FUENTES et als., Commissioners and Members of the Railroad Commission of Louisiana.

Answer of C. L. De Fuentes, W. L. Foster, and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, Defendants.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, do aver and say:

First. That complainant is a railroad corporation, created, organized and existing under and by virtue of the laws of the State of Illinois, and having its principal office at Chicago, in said State of Illinois, and is a citizen and resident of said State of Illinois, and that it is qualified, as a railroad corporation, to do business in the State of Louisiana; that Oliver M. Dunn is the duly qualified agent of Complainant, upon whom service of citation may be made in the State of Louisiana, and that defendants, as Commissioners and Members of the Railroad Commission of Louisiana, and each of them, are citizens and residents of the State of Louisiana and of the Eastern District thereof.

Second. Defendants admit that complainant is a common carrier of passengers and freight, and, as such, owns or controls, maintains and operates a line of railroad in the State of Louisiana, as to the length of which, however, defendants are not informed, which passes through the Parishes of Tangipahoa, St. John the Bap-

11 tist, St. Charles and Jefferson, into the Parish of Orleans, and terminating in the City of New Orleans; that, as such common carrier, complainant also operates a line of railroad which begins at Chicago, in the State of Illinois, and traverses the States of Illinois, Indiana, Wisconsin, Minnesota, Iowa, Nebraska, South Dakota, Missouri, Kentucky, Tennessee, Mississippi and Louisiana, forming a line and system of railroad known and designated as the Illinois Central Railroad.

Third. Defendants admit the truth of the allegation contained in the bill of complaint that, in order to handle and care for the

freight brought by complainant to its terminal, the City of New Orleans, for delivery there and for exportation, complainant obtained the consent of the proper authorities, authorized to represent the City of New Orleans, to provide itself with proper and necessary terminal facilities, consisting of main and switch and side tracks, warehouses, sheds, wharves and yards, and that it has so provided itself with such facilities; but defendants respectively aver that they do not know and cannot set forth as to their, or either of their belief, or otherwise, whether or not it is true or is a fact, as alleged by complainant, that the terminal facilities aforesaid cost exceeding one million dollars; nor do they know or are they able to set forth whether or not it is true and is a fact, as alleged, that, without such terminal facilities, complainant cannot conduct its business and discharge its duties to those who ship by its line of railway. Defendants aver, however, as a fact, that, in order to obtain from the City of New Orleans and from the proper authorities thereof, authorized to represent it in the matter, the terminal facilities which complainant obtained from and in said City of New Orleans, it was distinctly provided and so understood and agreed to by complainant that, in the laying of its main tracks and its switch and side tracks, in and upon the streets of the said City of New Orleans and in and upon all other public places occupied by its said tracks and under the control of said City and the proper municipal authorities thereof, the privileges and facilities thus obtained by complainant
12 should be and were subordinated to the superior right of said City of New Orleans and the proper governing authorities thereof, as well as of all others authorized and empowered to represent the State of Louisiana in that regard, to control complainant in the operation of its said railroad in the said City of New Orleans, and that all such terminal facilities as complainant may have obtained from said City of New Orleans and the governing authorities thereof, have also been so obtained, under and by virtue of certain ordinances of the City Council of said City, expressly providing that complainant should, for a reasonable compensation switch onto, upon and over its tracks, the cars of all other railroads coming into said City, without discrimination whatever, whenever such service should be required, as will be fully shown by the ordinances of the City Council of said City of New Orleans referred to herein, on the trial hereof.

Fourth. Defendants admit that by the constitution of the State of Louisiana, adopted in the year 1898, the Railroad Commission of Louisiana was created to regulate rates and charges of railroad companies, and of other companies named therein, and to prevent unjust discrimination, and that it was given other powers and duties, as fully set out in said constitution, to which defendants pray leave to refer upon the hearing hereof, and that, among other provisions, said constitution contains Articles 284 and 286, which are referred to in the bill of complaint, and to which defendants also refer; and defendants aver that by said articles of the constitution of Louisiana, the Railroad Commission of said State is also given the power and authority and it is made its duty to adopt, change, or make reason-

able and just regulations to govern and regulate railroad tariffs and service and to correct abuses of any kind, in the operation by said railroad companies of their railroads in this State. Defendants admit further, that, pursuant to the provisions of said constitution, defendants, C. L. De Fuentes and W. L. Foster, with R. N. Sims, were duly elected as Commissioners and Members of the Railroad Commission of Louisiana, and that they and each of them qualified and assumed and entered upon their duties as Commissioners and Members of the Railroad Commission of Louisiana; that, at all times thereafter, prior to the first day of April, 1901, defendants, C. L. De Fuentes and W. L. Foster and said R. N. Sims, continued in office and to act as such Commissioners and Members of the Railroad Commission of Louisiana; that said R. N. Sims resigned his office as said Railroad Commissioner on the first day of April, 1901, and that defendant, Overton Cade, was duly appointed as his successor, and that at all times subsequent to the first day of April, 1901, defendants, C. L. De Fuentes, W. L. Foster and Overton Cade, have constituted the said Railroad Commission of Louisiana.

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Fifth. Defendants admit that, on the 7th day of August, 1903, defendants, as Commissioners and Members of the Railroad Commission of Louisiana, adopted and entered Order No. 295, which is referred to in the bill of complaint, a copy of which is hereto annexed for reference and is marked Exhibit A, and that said order was duly promulgated in the official Journal of said Railroad Commission at Baton Rouge, on the 11th of August, 1903.

Sixth. Defendants admit the truth of the allegation contained in the bill of complaint, that complainant did, on or about the 13th of August, 1903, protest against the adoption of said Order No. 295 and that it did request a rehearing thereon, in order to afford complainant an opportunity to argue the matter fully, before said Order No. 295 became effective; that defendants agreed to hear argument thereon on the 2nd of October, 1903, at the City of New Orleans, and that on that day, the matter was fully argued before them, taken under advisement, and that, on the 16th of December, 1903, after a full investigation and examination of the subject, defendants, as the Railroad Commission of Louisiana, refused a rehearing, thus leaving said Order No. 295 in full force and effect, as will more fully appear by the records and proceedings of the Railroad Commission of Louisiana, to which, for greater certainty, defendants beg leave to refer.

Seventh. Defendants deny the truth of the allegation of the bill of complaint that, if the order of 7th August, 1903, entered as aforesaid, is allowed to stand and is enforced, complainant will be deprived of the privilege of entering into just, reasonable and legal contracts relative to its property. Defendants admit that the enforcement of said order of August 7th, 1903, may result in complainant being compelled to switch, or to permit the switching, onto its tracks, in this State, of the cars, whether loaded or empty, of other railroad companies with which it already connects, and by means of such existing connections between the tracks of complainant and those of other connecting railroad companies,

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operating in this State, for delivery, in this State, of such cars, either to shippers, or consignees, or to or by other connecting railroad companies in this State, but defendants deny that said order can be construed or interpreted to mean, or was intended to mean, that such switching of cars should be done by complainant or by any other railroad company affected by said order, except for reasonable compensation to be paid to the railroad company onto the tracks of which the cars of other railroads may be switched, but that, on the contrary, said order provides that such switching shall be done at rates approved or established by defendants, as the Railroad Commission of Louisiana.

Defendants deny further the truth of the allegation contained in the bill of complaint that the enforcement of said order of 7th August, 1903, will result in complainant being compelled to allow to other railroad companies, in this State, the use and benefit of its yards and terminal facilities, and to employ its property to extend the terminals of other railroads in the City of New Orleans, in order to enable them to receive or deliver freight beyond their lines and depots, except in the limited sense and to the limited extent of being compelled to receive onto its tracks in this State, the empty cars of other railroad companies, as well as such cars of other railroad companies, as may be loaded with freight shipped out of or into the City of New Orleans, by means of the switch connections with other railroad companies which complainant may already have and enjoy.

Defendants deny further the truth of the allegation contained in the bill of complaint, that, if said order of 7th of August, 1903, is enforced, complainant will be compelled to carry freight loaded into the cars of other railroad companies, from points at which it has provided facilities of its own for carrying such freight, at the same rates and at the same time, without being entitled to the tariff to be collected for the carrying of such freight; and further answering, defendants deny that said order No. 295 can be so construed or interpreted as to hold or be held to contemplate or intend that complainant may be compelled to carry freight loaded into the cars of other railroad companies from such points, without receiving for such transportation, the compensation to be collected as in other cases, for carrying such freight.

Defendants deny further the truth of the allegation contained in complainant's bill of complaint that, if said order of the 7th of August, 1903, is carried out and enforced, it will be compelled to allow the loaded cars of other railroad companies to occupy its yards and storage tracks, there to remain while being unloaded, to the extent alleged by complainant, to-wit: That the facilities which complainant has provided to handle its own business properly and economically will be turned over to competing carriers, and in such manner as to often preclude complainant from carrying out its obligations to its patrons, as well as from handling its own business promptly and economically, and thereby depriving complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, as alleged by it.

Eighth. Defendants deny the truth of the allegation of complainant's bill of Complaint that, if the order of 7th August, 1903, heretofore entered, is allowed to stand and is enforced, complainant will be denied the equal protection of the law guaranteed to it by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Ninth. Defendants deny further the truth of the allegations of complainant's bill of complaint that said order of 7th August, 1903, being Order No. 295, is illegal, null and void, because of its being beyond the powers conferred upon the defendants, as the Railroad Commission of Louisiana, by the Constitution of the State of Louisiana creating it, to adopt, but that, on the contrary, the right,
power, and authority is given to defendants, as such Commis-
16 sion, by the Arts. 283 to 289, both inclusive, of the Constitution of the State of Louisiana, adopted by said State on the 12th of May, 1898, and especially by Article 284 of said Constitution, to adopt and enforce the same, and defendants aver further that said order was and is legal and within the power and authority of defendants, as the Railroad Commission of Louisiana, to enter and adopt, under the terms of Art. 271 of the Constitution of said State, which makes it the duty of every railroad company, operating in this State, to receive and transport the passengers, tonnage and cars, loaded or empty, of other railroad companies with which they may connect in this State, without delay or discrimination. That said order is not arbitrary or unreasonable, and the same is not an unconstitutional exercise of legislative power, and the same is not oppressive in its operation upon complainant or any other railroad company in this State.

Defendants deny further the truth of the allegation of complainant's bill of complaint that, by said order, defendants, as the Railroad Commission of Louisiana, seek to compel complainant to devote its yards and terminal facilities, without warrant or authority of law, to other purposes than the handling of its own business, except in the limited sense and to the limited extent of requiring complainant and all other railroad companies in this State, to switch onto its and their tracks, the cars of other railroad companies, in the manner and to the extent provided by said Order No. 295.

Tenth. Defendants deny further the truth of the allegation of complainant's bill of complaint, that, if the said Order No. 295 of August 7th 1903, is allowed to stand and is enforced, the same will impair the obligation of contracts entered into by complainant in providing itself with terminal facilities, contrary to and in violation of Section 10 of Article 1 of the Constitution of the United States.

Eleventh. Defendants deny further the truth of the allegation of the bill of complaint, that said Order No. 295 is in violation of the Third Section of the Act of Congress of the United States, known as "An Act to Regulate Commerce," passed on the 4th of February, 1887, or of any of the amendments thereto; and they deny that said order, in its adoption, operation or effect, can be held to be subject
to, or affected by, the provisions of said Act of Congress, and
17 the amendments thereto, but that, on the contrary, the matters dealt with in and by said Order No. 295, were and are

entirely within and subject to the control of the Railroad Commission of the State of Louisiana, and in no manner subject to the jurisdiction or control of the Interstate Commerce Commission of the United States, or within the reach of any of the Acts of Congress of the United States for the regulation of interstate commerce.

Twelfth. Defendants admit the truth of the allegation contained in complainant's bill of complaint, that under Section 8, Clause 3, of the Constitution of the United States, and the Act of the Congress of the United States to regulate commerce, passed on the 4th of February, 1887, and the amendments thereto, the United States have assumed and are exercising certain jurisdiction in matters relating to the regulation of interstate commerce. Defendants deny, however, the truth of the allegation contained in the bill of complaint, that the cars which may be affected by said Order No. 295 are, at the time said order operates upon them, engaged in interstate commerce; further answering, defendants deny the truth of the allegation of said bill of complaint that the contents of such cars, when loaded, are, at the time such order operates upon them, interstate commerce, or that such order, if carried into effect, will be a regulation of interstate commerce and an infringement upon the jurisdiction of the United States, which defendants admit has the exclusive right to regulate interstate commerce; and that said Order No. 295 is not, for reasons thus assigned by defendants, in violation of the constitution and laws of the United States, but that, on the contrary, the same was and is entirely within the power, authority and control of the Railroad Commission of Louisiana, to adopt and enforce.

Thirteenth. Defendants admit the truth of the allegation of the bill of complaint that it is provided, in and by the constitution of the State of Louisiana, that, if any railroad company shall violate any of the rates, charges, orders or decisions of the Railroad Commission, such railroad company may forfeit and pay to the State of Louisiana not less than one hundred dollars and not more than five thousand dollars, to be recovered before any court of competent jurisdiction, at the domicile of said Commission, or of the
18 company, or at the place where the complaint arises; and while it is true that defendants would have proceeded to enforce said order against complainant, in case of its violation by it, but for the present proceeding, the filing of which operates, under the terms of Articles 285 and 286 of the constitution of the State of Louisiana, to prohibit defendants from entering any forfeiture against complainant, or proceeding to collect the same, nevertheless, defendants deny the truth of the allegation of the bill of complaint, that any such action on its part, as prescribed by the constitution and laws of the State of Louisiana, could or would lead to a multiplicity of suits.

Fourteenth. Defendants admit the truth of the allegation contained in the bill of complaint, that the controversy in this action is between citizens of different States, but defendants deny the truth of the allegation that the amount in controversy herein exceeds the sum of five thousand dollars, exclusive of interest and costs, as alleged by complainant. Further answering, defendants say and aver that the amount involved and the matter in dispute in this con-

troversy do not exceed, exclusive of interest and costs, the sum of two thousand dollars; and therefore, for this reason, this Honorable Court is without jurisdiction to entertain this suit.

Fifteenth. Defendants deny the truth of the allegation in complainant's bill of complaint that any question is involved herein arising under the constitution and laws of the United States; but if any such question is involved herein, nevertheless this Honorable Court is without jurisdiction to hear and determine the same, because the amount involved and the matter in dispute in this controversy do not exceed, exclusive of interest and costs, the sum of two thousand dollars.

Defendants deny further the truth of the allegation contained in the bill of complaint that defendants, as Commissioners and Members of the Railroad Commission of Louisiana, are undertaking arbitrarily, to the great detriment and irreparable injury of the property rights of complainant, to compel complainant, by adopting and putting in force the aforesaid Order No. 295, to deprive complainant of its property and its property rights, without due process of law; and they further deny the truth of the allegation in the bill of complaint that the enforcement of said order will deprive
19 complainant of its property without due process of law.

Sixteenth. Defendants admit that, unless prohibited from so doing by a Court of competent jurisdiction, they would have undertaken to enforce said Order No. 295, but defendants deny that the enforcement of said order could have extended beyond the imposition of such penalties or forfeitures as the Constitution of the State of Louisiana prescribes, subject to the action of defendants in that regard being set aside and annulled in, through and by proper proceedings instituted by complainant against defendants.

Wherefore, these defendants having fully answered, confessed, traversed and avoided or denied all the matters in said bill of complaint, material to be answered, according to their best knowledge and belief, humbly pray this Honorable Court to enter its judgment that these defendants be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

(Signed) WALTER GUION,
Attorney General of Louisiana,
Solicitor for Defendants.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

We, C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, defendants in the above cause, having read the foregoing answer, and being duly sworn, do say that the matters and things in said answer contained are true.

(Signed) C. L. DE FUENTES.
" W. L. FOSTER.
" OVERTON CADE.

Sworn to and subscribed before me, this 5th day of October, 1904.

(Signed) CHARLES SCHNEIDAU,
[SEAL.] *Notary Public.*

20 *Agreed Statement of Facts.*

Filed April 18th, 1913.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES et al., Commissioners and Members of the Railroad Commission of Louisiana.

It is agreed between the undersigned solicitors for plaintiff and defendants that this matter shall be submitted to the Court for decision upon the Bill and answer and the following agreed statement of facts, viz:

1st. That this Court has jurisdiction.

2nd. That the plaintiff in order to handle and properly care for the freight brought to the City of New Orleans, Louisiana, from other States for delivery here and for exportation to Europe and other foreign countries as well as to care for freight imported from foreign countries, and to be delivered in the states through which its line of railroad passes, as well as the other states of the United States and Canada, has, after obtaining the consent of the proper governing body, at a cost exceeding several hundred thousand dollars, provided itself, in the said City of New Orleans, with the proper and necessary facilities, consisting of switch and side tracks, warehouses and yards, and without said terminal facilities plaintiff cannot conduct its business as above stated. The annexed ordinances, numbered 1 to —, *is* the consent of the governing board, referred to.

3rd. That the other railroad companies entering New Orleans have competitive lines to plaintiff's line of railroad from many points in various states to New Orleans, charging the same rates and making the same time.

4th. That the manner in which freight, both intrastate and interstate, brought in New Orleans by plaintiff is handled is to place the loaded cars on the various switch tracks of plaintiff to be unloaded by consignees.

21 5th. That if said Order No. 295 is allowed to stand, plaintiff's switch tracks will be subjected to use by the several railroad companies entering New Orleans, causing more cars to pass over the same and interfering with plaintiff carrying out its obligations to its patrons.

6th. That when the cars loaded with interstate and intrastate freight arrive at New Orleans, the consignee is first notified that the freight is ready for delivery at depot or warehouse of the company; that after consignee calls and pays the freight bill he gives a switching order to the agent of the railroad company transporting the shipment to New Orleans to have the car switched and placed on

the terminal tracks, or on some of the industrial tracks connected with the terminal tracks, in the City of New Orleans, for delivery; that this order is then submitted through proper agency to the employees of the Illinois Central Railroad Company, and the Illinois Central Railroad Company executes the switching order.

7th. That the Illinios Central Railroad Company, in connection with the various railroads entering the City of New Orleans, has issued, published and now has in effect various terminal tariffs covering terminal switching in the City of New Orleans, which tariffs do not include any rates for transporting the freight to or from the City of New Orleans but simply cover the charges made for switching cars from the depot or yard of one railroad company to points on its terminals. Copies of all such tariffs are on file and approved by the Interstate Commerce Commission, and with the Railroad Commission of Louisiana.

It is understood that said tariffs can be referred to by either party at any time during the progress of this case on presenting any view in connection therewith.

8th. That there are switch movements between points within the City of New Orleans, as set forth in Admission No. Sixth hereof, one or both of which may be located upon the terminals of the Illinois Central Railroad Company, upon which there is a switching
22 charge varying according to distance, and in addition to which switching charge there is a charge of $3.00 per car for car rental; that these switch movements are entirely within the switching limits of the City of New Orleans and are made on the orders of the consignees under the circumstances stated in No. Sixth hereof; that said charges are shown on tariffs filed with and approved by the Interstate Commerce Commission, and with the Railroad Commission of Louisiana.

9th. That Order No. 295 was adopted by the Railroad Commission of Louisiana, after a full hearing and investigation, and that the said Railroad Commission was legally organized, and its Commissioners legally elected members thereof at the time said Order was adopted.

(Signed) GUSTAVE LEMLE,
Solicitor for Complainant.
" WYLIE M. BARROW,
Solicitor for Defendant.

23 *Opinion of Court.*

Filed January 15th, 1914.

United States District Court, Eastern District of Louisiana, Baton Rouge Division.

No. 49. C. C.

ILLINOIS CENTRAL RAILROAD CO.
vs.
C. L. DE FUENTES et als.

This case has remained on the docket long enough for the Supreme Court to indirectly decide it. See Grand Trunk Railway Company et al. vs. Michigan Railroad Commission, decided December 8, 1913. The restraining order heretofore issued will be recalled and set aside and the bill dismissed without prejudice.

24 *Final Decree.*

Filed January 19th, 1914.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Final Decree.

This cause came on to be heard at this term, and was argued by counsel, and taken under advisement; whereupon, upon consideration thereof, it is now

Ordered, adjudged and decreed that the restraining order heretofore issued be and it is hereby recalled and set aside, and that the bill be and the same is hereby dismissed, without prejudice, at complainant's costs.

(Signed) RUFUS E. FOSTER, *Judge.*

New Orleans, Louisiana, January 19, 1914.

25 *Petition for Appeal and Order Granting Same and Appeal Bond.*

Filed March 4th, 1914.

U. S. District Court, Eastern District of La., New Orleans Division.

No. 49. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY
versus
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

The above named plaintiff conceiving itself aggrieved by the final decree made and entered on the 19th day of January, 1914, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) R. V. FLETCHER,
" HUNTER C. LEAKE,
" GUSTAVE LEMLE,
Attorneys for Plaintiff.

It is ordered that the foregoing appeal be allowed as prayed for upon plaintiff, the Illinois Central Railroad Company, giving bond in the sum of Five hundred Dollars, conditioned as the law directs, which shall operate as a supersedeas.

New Orleans, La., March 4, 1914.

(Signed) RUFUS E. FOSTER,
Judge of the United States District Court.

26 U. S. District Court, Eastern District of La., New Orleans Division.

No. 49. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Know all men by these presents, that we, the Illinois Central Railroad Company as principal and Gustave Lemle, as surety, are held and firmly bound unto C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Com-

mission of Louisiana in the full sum of Five Hundred Dollars, to be paid to the said C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Commission of Louisiana; their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Dated this 4 day of March, 1914, and

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana in a suit depending in said Court, between the Illinois Central Railroad Company and C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Commission of Louisiana, No. 49 of the docket of said Court, in Equity, a final decree was rendered against the said Illinois Central Railroad Company, and the said Illinois Central Railroad Company having obtained an appeal and filed a copy thereof in the Clerk's office of said Court to reverse the final decree in the aforesaid suit, and citations directed to the said C. L. De Fuentes, W. L. Foster and Over-
27 ton Cade as Commissioners and Members of the Railroad Commission of Louisiana, citing and admonishing them to be and appear before the Supreme Court of the United States to be holden at Washington, D. C., within thirty days from date hereof.

Now, the condition of the above obligation is such, that if the said Illinois Central Railroad Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

Sealed and delivered in the presence of

(Signed) ILLINOIS CENTRAL RAILROAD CO.,
By GUSTAVE LEMLE, *Attorney.*
" GUSTAVE LEMLE.

Approved by:
(Signed) RUFUS E. FOSTER, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of La.:

Personally came and appeared Gustave Lemle, who, being duly sworn, deposes and says that he is surety on the within bond; that he resides in New Orleans, La., and is worth the full sum of Five Hundred Dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) GUSTAVE LEMLE.

Sworn to and subscribed before me, this 4 day of March, 1914.
[SEAL.] (Signed) W. B. DONOVAN.
Deputy Clerk U. S. District Court, E. D. of La.

Before me the undersigned authority, personally came and appeared Gustave Lemle, who, being duly sworn by me, deposes and

says that he is of counsel for the plaintiff in the above styled and numbered matter, and that the President, Vice-President and general officers are absent from the jurisdiction of this Court.

(Signed) GUSTAVE LEMLE.

Sworn to and subscribed before me, this 4 day of March, 1914.

[SEAL.] (Signed) W. B. DONOVAN,
Deputy Clerk U. S. District Court, E. D. of La.

28 *Assignment of Error on Appeal.*

Filed March 4th, 1914.

The District Court of the United States.

In Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Assignment of Error on Appeal.

And on the 4th day of March 1914, comes the said plaintiff by Hunter C. Leake and Gustave Lemle, its solicitors and says that the decree in said cause is erroneous and against the just rights of said plaintiff for the following reasons:

First. Because the evidence showed that Order 295 of the Railroad Commission of Louisiana, the enforcement of which was enjoined and the nullity thereof sought in the present action, makes it obligatory upon plaintiff to switch cars for any other railroad with which it connects at rates approved or established by the Railroad Commission of the State of Louisiana "whether such cars are to be loaded with freight to be shipped out of the state or loaded with freight shipped into the State of Louisiana." The said order is therefore clearly an interference with and regulation of inter-state commerce, contrary to Section 8 of the Constitution of the United States.

Second. Because the evidence showed that under the said order 295 of the Railroad Commission of Louisiana, every railroad company entering New Orleans by making a physical connection with the tracks of the Illinois Central Railroad Company, can get the use of that Company's costly terminals in New Orleans and
29 make it do the switching necessary to that end, upon simply paying for the service of carriage at rates approved or established by the Railroad Commission of Louisiana. To require such action on the part of the Illinois Central Railroad Company is to take its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Third. Because the evidence showed that under the said order 295 of the Railroad Commission of Louisiana every competitive railroad from points without the state of Louisiana such as Chicago, St. Louis, Louisville, Memphis and points within the State, such as Baton Rouge, etc., could for the purpose of reaching and using plaintiff's terminal station and its costly terminals, in the city of New Orleans, by making an arbitrary connection with the railroad of plaintiff in New Orleans, or at a point near thereto, make plaintiff do the switching necessary to that end, upon simply paying for the service of carriage at rates approved or established by the Railroad Commission of Louisiana. This would deprive plaintiff of the privilege of entering into just, reasonable and legal contracts relative to its property; force plaintiff to carry freight loaded into other railroad companies' cars at points it has provided facilities of its own for carrying such freight at the same rates and in the same time established by its competitors, and thus deprive plaintiff of all tariff for carrying the freight for the benefit of its competitors and compel it for a mere nominal switching charge to be established by the Railroad Commission of Louisiana to allow the cars of other companies so loaded to be on its yards and storage tracks and to remain there while being unloaded. The result will be that the terminals and terminal station which plaintiff has provided at a very heavy cost to handle its own business properly and economically will be turned over to its competitors. To require such a service of plaintiff is to take its property without due process of law and to deprive it of the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Fourth. Because it appears by the evidence and from the form of the order of the Louisiana Railroad Commission, that if this order becomes operative, its inevitable effect will be to require the plaintiff to participate in the transportation of freight from competitive points and elsewhere in and out of the State of Louisiana to New Orleans without permitting the plaintiff to include in the route of such freight substantially all the length of its line. Plaintiff shows that its right to employ the longest possible mileage of its own is a property right and if plaintiff is deprived thereof, it is denied the equal protection of the law and its property is taken without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Fifth. Because the evidence showed that order 295 of the Railroad Commission of Louisiana is in violation of an Act of Congress known as an act to regulate commerce passed February 4th, 1887, and amendments thereto, and is, therefore null and void.

Sixth. Because the evidence showed that order 295 of the Railroad Commission of Louisiana deprives plaintiff of its property and property rights without due process of law and also deprives plaintiff of the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Seventh. Because the evidence showed that plaintiff's terminals

at New Orleans have been created at an expense of several hundred thousand dollars, and under the local conditions at New Orleans they could not be duplicated; that they are necessary to the operation of plaintiff's business, as it could not discharge its duties
31 as a common carrier without them, and that to compel the opening of them to other railroads would be virtually a taking of the property of plaintiff. This situation has been recognized by the Congress of the United States, since the third section of the Interstate Commerce Act, while requiring the railroads subject to the act to freely interchange traffic, has added these words: "But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Eighth. Because Congress by Act of June 20, 1906, or Hepburn Act, and amendments thereto, has taken over the whole subject of terminals, team tracks, switching tracks, sidings, etc., therefore, the Railroad Commission for the State of Louisiana has no right or authority to require plaintiff, an interstate carrier of freight and passengers, to switch cars tendered to it on its terminals, in the City of New Orleans, at rates to be fixed and established by the said Railroad Commission.

Ninth. Because the Interstate Commerce Commission in the matter styled Waverly Oil Company vs. Pennsylvania Railroad Company, submitted to the Commission on May 9th, 1910, and decided December 3rd, 1913, held that the requirements upon a carrier for the use of its terminals must be reasonable and the compensation must be fixed not on the basis of mere cost of service, but in view of the fact that the terminals are of special value to a railroad as part of its system; and that the public may require railroad companies to handle cars upon its terminals tracks, but that requirement should be made and the compensation should be determined in view of the entire situation, and that the Interstate Commerce Commission has the power to fix the same. It follows, therefore, that the order 295 of the Railroad Commission of Louisiana, requiring plaintiff to switch cars for any other railroad at rates to be approved or established by it, whether such cars are to be loaded with freight to be shipped out of the state or loaded with freight
32 shipped into the state of Louisiana, is null and void, as the same power cannot be lodged in the Interstate Commerce Commission and the State Railroad Commission at the same time.

Tenth. Because the evidence showed that order 295 of the Railroad Commission of Louisiana provides that all tariffs for the service of switching cars in the state of Louisiana, whether loaded with interstate *of* intrastate freight, shall be filed with the Commission, and all the Commission's rules and orders relative to rates and changes in rates shall also apply to switching charges; that under Act 171 of 1908, suits to set aside orders of the Railroad Commission must be brought within three months and all rights are prescribed after that time, and that under Article 286 of the Constitution of the State of Louisiana, plaintiff is subject to a fine of not less than

$100.00, nor more than $5,000.00 for each violation of the rates, charges, orders or decision of said Commission. Provided that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, no fine or penalty for disobedience there*to*, or disregard thereof, shall be incurred until after said contestation shall have been finally decided by the Courts, and then only for acts subsequently committed. If the judgment rendered herein stands as the final judgment, plaintiff's right to attack the said order as null and void would be prescribed by Act 171 of 1908, and in the event it is not, it will either be compelled to obey it in each instance or subject itself to the payment of the penalties hereinabove referred to, unless it daily resorts to the court in each instance a car is tendered to it to be switched to test the correctness and application of said order, and as this will be many times each day, it necessarily means a multiplicity of suits.

Eleventh. Because the evidence shows that order 295 of the Railroad Commission of Louisiana read in connection with Article 286 of the Constitution of Louisiana is null and void upon its
33 face, because the severity of the penalties makes an appeal to the court against its provisions at such risks and costs that plaintiff should not be compelled to incur.

Twelfth. Because the Interstate Commerce Commission in said matter 4851, Waverly Oil Works Company vs. Pennsylvania Railroad Company et al., submitted to it May 9th, 1913, and decided December 3rd, 1913, held that before one railroad company can require another to transport over its terminals cars loaded with freight that a joint rate should be established by agreement between the said railroad companies, and in the event of their failure to agree by the Interstate Railroad Commission. In the said decision, the Interstate Commerce Commission clearly recognized that, for making deliveries or for terminal service, the carrier performing such service is entitled to substantially greater compensation than would represent a proper switching charge. The order, therefore, of the Railroad Commission of Louisiana, requiring plaintiff to switch for all other railroad companies at rates to be fixed by the Railroad Commission of Louisiana cars to be loaded with freight to be carried out of the State and cars loaded with freight brought into the state, is null and void.

Thirteenth. Because as held by the Interstate Commerce Commission in the suit of Waverly Oil Works Company vs. Pennsylvania Railroad Company, and by the Supreme Court of the United States in Grand Trunk Railroad Company vs. Michigan Railroad Company, that while the public have the right to require the railroad Companies to transport cars over their terminal lines, it has no right to require one railroad company to switch the cars tendered to it by another railroad company. In the case of transporting, the public must pay the rate, while in the case of switching, the railroad company tendering the freight may absorb the switching charge.

Wherefore, the plaintiff prays that the decree of the said Court

may be reversed, and that there be judgment in favor of plaintiff as prayed for.

(Signed) R. V. FLETCHER,
" HUNTER C. LEAKE,
" GUSTAVE LEMLE,
Att'ys for Plaintiff.

34 *Præcipe for Transcript.*

Filed March 4th, 1914.

On Letterhead of Gustave Lemle.

March 4, 1914.

Clerk of the United States District Court, Eastern District of Louisiana, New Orleans, La.

DEAR SIR: Referring to the appeal taken by plaintiff to the United States Supreme Court in the matter styled Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Commission of Louisiana, you will please incorporate into the transcript the following parts of the record, viz:

First. The bill.

Second. The answer.

Third. The stipulation relative to the submission of the matter, and the exhibits referred to in said stipulation as being made a part.

Fourth. The opinion and decree of the Court.

Fifth. Petition for appeal and order granting it.

Sixth. Bond for appeal.

Seventh. Assignment of Errors.

I hereby certify that I did on the 24th and 25th days of February, 1914, address and mail the letters of which the annexed Exhibits "A" and "B" are copies to the Honorable W. M. Barrow, Assistant Attorney General of the State of Louisiana and a solicitor for the defendant in the above mentioned and described suit.

Yours truly,

(Sig.) GUSTAVE LEMLE,
Local Attorney.

35 Feb. 24, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

DEAR SIR: I shall on Wednesday ask the Court for appeal from the final decree rendered in the case of Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster, and Overton Cade as Commissioner- and Members of the Railroad Commission of Louisiana, No. 49, in Equity, United States District Court, Eastern District of Louisiana. Number 2 of the agreed statement of facts reads:

"That the plaintiff in order to handle and properly care for the

freight brought to the City of New Orleans, Louisiana, from other States for delivery here and for exportation to Europe and other foreign countries, and to be delivered in the states through which its line of railroad passes, as well as the other states of the United States and Canada, has, after obtaining the consent of the proper governing body, at a cost exceeding several hundred thousand dollars, etc. * * * The annexed ordinances, numbered 1 to —, *is* the consent of the governing board, referred to."

No ordinance that I am aware of was filed in the United States District Court. You will recall you were to furnish a copy of the ordinances to be annexed to the admission. Please send me to be filed in the District Court such ordinances as you desire to be incorporated into the record on appeal. Rule 75 of the New Federal Equity Rules requires of appellant or his solicitor to file with the clerk of the court from which the appeal is prosecuted, together with proof or acknowledgment of service of a copy on the appellee or his solicitor, a præcipe which shall indicate the portions of the record to be incorporated into the transcript on such appeal. Should the appellee or his solicitor desire additional portions of the record incorporated into the transcript, he shall file with the clerk of the court his præcipe also within ten days thereafter, unless the time shall be enlarged by the court or a Judge thereof, indicating such additional portions of the record desired by him. Please,
36 therefore, take notice that I shall instruct the Clerk that the following parts of the record be incorporated into the transcript on appeal, viz:

First. The bill.

Second. The answer.

Third. The stipulation relative to the submission of the matter, and the exhibits referred to in said stipulation as being made a part.

Fourth. The opinion and decree of the Court.

Yours truly,

——— ———.

37 Feb. 25th, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

DEAR SIR: Referring to my letter informing you as to what I had instructed the Clerk to incorporate in the transcript of appeal in the matter of Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster and Overton Cade, I have added thereto the following:

Fifth. Petition for appeal and order granting it.

Sixth. Bond for appeal.

Seventh. Assignment of Errors.

Yours truly,

———— ————,
Local Attorney.

38 Feb. 27, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

DEAR SIR: I have yours of the 26th, with enclosure as stated. I note that you have written to Mr. Leake asking that he furnish

me with copies of the other ordinances under which the Illinois Central Railroad Company operates in the City of New Orleans, in order that they may become part of the transcript on appeal. I shall send you copy of the assignment of errors as soon as they are completed, which will be in the next two or three days.

I note that you say it will be your purpose as soon as the appeal is filed in the Supreme Court of the United States, to move for the advancement of the case, and that if I will join you in the matter, you will be glad to have me do so. I shall refer your letter to Mr. Hunter C. Leake, and as soon as I receive his reply I shall communicate further with you on the subject.

Yours truly,

——— ———.

39 March 4, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

Illinois Central Railroad Company vs. Railroad Commission.

DEAR SIR: Referring to your letter of February 26th, enclosed please find letter from Mr. Hunter C. Leake, of date February 28th, 1914. You will note Mr. Leake says that you are in error in stating that Mr. Ferry and he agreed to furnish you with copies of all ordinances printed in pamphlet form; that the only ordinance bearing on this matter which he has in pamphlet form is Ordinance 15,080, and that as to the other ordinances you should specify just exactly what ordinances you want to use and he will get printed copies of the same from the City Hall, which would answer every purpose. I shall, therefore, hand to the Clerk to be filed and incorporated into the record Ordinance 15080. If you desire any other ordinances incorporated into the record, please let me hear from you at an early date, and I shall request Mr. Leake to obtain them and file them with the Clerk, to be incorporated into the record.

I enclose you copy of assignment of errors, which I will thank you to acknowledge receipt.

Yours truly,

——— ———,

Local Attorney.

40 EXHIBIT.

Filed March 4th, 1914.

MAYORALTY OF NEW ORLEANS,
CITY HALL, March 1, 1899.

Calendar No. 1855.

No. 15,080, Council Series.

An Ordinance.

SECTION 1. Be it ordained by the Council of the City of New Orleans, that Water Street, between the upper line of Patterson street and the lower line of Penniston street and the lower width of 110 feet by the addition thereto of a strip of private property 60 feet wide, to be purchased or expropriated for the purpose as hereinafter provided, along and abutting upon the river line of said Water street, according to a plan to be prepared by the City Engineer, and to be annexed hereto as part hereof.

SECTION 2. Be it further ordained, That Water street (widened as proposed by this ordinance, be connected with Front street at or about Upperline street, across Bordeaux, Lyons and Water streets and through private property to be purchased or expropriated for the purpose as hereinafter provided; said connection between Water and Front streets to be 110 feet in width between parallel lines, the line nearest the lake to begin at the present lower lake corner of Bordeaux and Water streets, and to end at or about the present lower lake corner of Upperline and Front streets, according to a plan to be prepared by the City Engineer, and to be annexed to this ordinance as part hereof.

SECTION 3. Be it further ordained, etc., That Front street, from the present upper line of Upperline street, to the lower line of Valmont street, be widened from its present width of 50 feet, to a width of 110 feet, by the addition thereto of a strip of private property 60 feet in width to be purchased or expropriated for the purpose as hereinafter provided, along and abutting upon the river line of said Front street; according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

41 SECTION 4. Be it further ordained, etc., That Front street, between the upper line of Valmont street and the lower line of Joseph street be widened from its present width of 50 feet to a width of 110 feet by the addition thereto of a strip of private property 60 feet in width, to be purchased or expropriated as hereinafter provided, along and abutting upon the lake line of said Front street, according to a plan to be prepared by the City Engineer and annexed hereto as part hereof.

SECTION 5. Be it further ordained, etc., That the Board of Commissioners of the Orleans Levee District be requested to remove the

present levee commencing at a point at or about Joseph street, and ending at or about the upper line of Audubon Park, and to construct a new levee as near the river as in the judgment of the Board of Commissioners of the Orleans Levee District, approved by the Board of Engineers of the State of Louisiana, may be safe and proper. Said new levee to connect, at its lower end, with the present levee at or about Joseph street, and at its upper end, with the present levee at or about the upper line of Audubon Park; the proposed new levee to be constructed by the Board of Commissioners of the Orleans Levee District with funds to be furnished to said Board as hereinafter provided, it being however, understood that no claims shall be made against the City of New Orleans for any property taken for the purpose of constructing said levee.

SECTION 6. Be it further ordained, etc., That a new street 110 feet in width, to begin at the lower corner of Front street (widened as proposed by this ordinance) and Joseph street, and to extend to the upper line of Audubon Park, be opened across intervening streets and through private property to be purchased or expropriated for the purpose as hereinafter provided, along the river, on a line as nearly parallel as practicable to the new levee, between Joseph street and the upper line of Audubon Park, petitioned and provided for in this ordinance, the river line of said new street, however, to be not less than 60 feet from the inner toe of said proposed new levee, the said new street to connect with an extension thereof as hereinafter provided according to a plan to be prepared by the City En-
42 gineer and to be annexed hereto as part hereof.

SECTION 7. Be it further ordained, etc., That an extension of the new street provided for in this ordinance, said extension to begin at a point at or about the upper line of Audubon Park, where it shall connect with said new street and extend to the upper line of Hillary street and to be 110 feet in width, be opened across intervening streets and through private property to be purchased or expropriated for the purpose as hereinafter provided; along the river on a line as nearly parallel as practicable to the present levee, the river line of said extension, however to be never less than 60 feet from the inner toe of the present levee, according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 8. Be it further ordained, etc., That a further extension of the new street, provided for in this ordinance, said further extension to begin at the upper line of Hillary street, where it shall connect with the extension of said proposed new street provided for in this ordinance to extend to the upper line of the Parish of Orleans and to be 110 feet in width, be opened across intervening streets and through private property to be purchased or expropriated for the purpose, as hereinafter provided for, along lines as nearly identical as practicable with those of the extension of said new street provided for in the preceding section of this ordinance, and on lines as nearly straight as practicable the river line of said further extension to be never less than sixty feet from the inner toe of the levee, according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 9. Be it further ordained, etc., That upon the terms and conditions hereinafter set forth and provided in this ordinance, the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors and assigns, be and it is hereby authorized and empowered to locate, construct, maintain freely use and operate, as part of its railroad and railroad system, two main railroad tracks from the lower line of Penniston street along Water street to the lower line
43 of Bordeaux street, along the connection of Water street with Front street, between Bordeaux and Upperline streets, provided for by this ordinance, into Front street, along Front street to the lower side of Joseph street, along the new street provided for by this ordinance, from the lower line of Joseph street to the upper line of Audubon Park, along the extensions of said new street, provided for by this ordinance, from the upper line of Audubon Park to the upper line of the Parish of Orleans and over and across all intervening streets, alleys and public places; and also such connecting tracks, cross-overs, spurs and switches as may from time to time be necessary to connect each of said main railroad tracks with the other, and with the Stuyvesant Docks on the Mississippi River in the City of New Orleans or any private property which said railroad, its lessees, successors or assigns may hereafter acquire between Penniston street and Napoleon avenue, the said two main railroad tracks to be located on the inner or lake side of the two public railroad tracks provided for by this ordinance, and on the inner or lake side of the neutral ground provided for by this ordinance, and shall be located according to lines and grades to be established by the City Engineer and according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 10. Be it further ordained, etc., That the Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns, shall be and it is hereby authorized and empowered to locate, construct, maintain, freely use and operate the two main railroad tracks provided for by this ordinance, which are, for convey-ance, designated by this ordinance as tracks Nos. 1 and 2, upon and only upon the following terms and conditions: First—The City of New Orleans shall acquire by purchase or expropriation according to law, all private property needed for the widening or opening of any street to be widened or opened as provided for by this ordinance, and said private property, when so acquired, shall be and remain perpetually dedicated to public use for street uses and purposes as provided for by this ordinance. All of said property shall be acquired b-
44 the City of New Orleans, by expropriation according to law, except such as may be acquired by purchase by the City of New Orleans, with the consent and approval of said railroad company, or by said railroad company, to be dedicated in all cases as herein provided for, and the cost of all private property purchased or expropriated by the city shall be paid by the said railroad company to the owners thereof at the dates when the city acquires title for the public to the same.

Second. That the funds required for the removal of the levee from its present line, to a line nearer the river as provided for by

this ordinance, shall be paid over by said railroad company to the Board of Commissioners of the Orleans Levee District at such times and in such amounts as the Board may require.

Third. That said railroad shall locate and construct from the upper line of Audubon Park to the upper line of the Parish of Orleans, along the extension of the new street provided for by this ordinance, and on the outer or river side of the two tracks provided for by this ordinance, for the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors and assigns, two railroad tracks similar in all respects, and constructed in the same manner as the tracks provided for by this ordinance for said Chicago, St. Louis and New Orleans Railroad Company, with such connecting tracks, cross-overs, spurs and switches to connect each of said tracks with the other, as may be designated by the City Engineer at the time of the construction of said two tracks, and the said railroad company shall dedicate said two railroad tracks, connecting tracks, spurs and switches, in full ownership and complete title to the City of New Orleans for perpetual public use, said tracks being for convenience, designated by this ordinance as tracks Nos. 3 and 4, and shall be constructed according to lines and grades to be established by the City Engineer. The center line of track No. 3 shall be 13 feet from the center line of track No. 2 and the center line of track No. 4 shall be 26 feet from the center line of track No. 2 according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 11. Be it further ordained, etc., That the payment by the said railroad company of the purchase price or cost of expropriation of all private property acquired by the City of New Orleans for the purpose of widening, connecting or opening streets, to the owners thereof, at the dates when the city shall acquire title to the same, the dedication as herein provided for by said railroad company of property acquired by it for street purposes as provided for by this ordinance, the payment by said railroad company to the Board of Commissioners of the Orleans Levee District in such sums and at such times as said board may require of all funds needed for the removal of the present levee, and for the construction of the proposed new levee and its connections with the present levee, as provided for by this ordinance, and the location and construction by said railroad company of the two railroad tracks, connecting tracks, cross-overs, spurs and switches to be dedicated to the city for perpetual public use, as provided for by this ordinance, shall be and they are hereby declared to be, by the Council of the City of New Orleans, and shall be acknowledged and accepted by said railroad company as conditions precedent to be fully and completely complied with and performed by said railroad company before the grant to said railroad company to locate, construct, maintain, freely use and operate the main railroad tracks connecting tracks, cross-overs, spurs and switches provided for by this ordinance for said railroad company shall have legal force and effect. That whenever the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors or assigns, shall have fully and completely complied with and performed the conditions specified in this section

they shall be entitled to receive from the Mayor of the City of New Orleans, over his official signature and Seal, a certificate to that effect, and such certificate, when approved by the Council, shall be full proof of the fact that said Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors or assigns, have fully and completely complied with and performed all of said conditions.

46 SECTION 12. Be it further ordained, etc., That all of the railroad tracks, connecting tracks, cross-overs, spurs and switches to be laid in streets and public places as provided by this ordinance, shall be constructed on lines and grades to be established by the City Engineer. There shall be established in the 110 foot street provided for by this ordinance, a neutral ground 50 feet in width, according to a plan to be prepared by the City Engineer, which said neutral ground shall be occupied by the railroad tracks provided for by this ordinance, and which said neutral ground shall be curbed and grade- by said railroad company, the grades to be established by the City Engineer. Said railroad company shall maintain, so as not to obstruct drainage, and keep in good order, between Penniston street and the upper line of Audubon Park, the entire neutral ground provided for by this ordinance provided that said railroad company shall only maintain that portion of said neutral ground between said limits, which is not occupied by the railroad tracks provided for said railroad by this ordinance, and designated as tracks Nos. 1 and 2 only as long as said portion of said neutral ground is unoccupied by railroad tracks of other railroads or public railroad tracks, and thereafter shall be bound to maintain only that half of said neutral ground upon which the tracks provided for said railroad company by this ordinance are laid, said railroad company shall maintain so as not to obstruct drainage, and keep in good order between the upper line of Audubon Park and the upper line of the Parish of Orleans the entire width of the neutral ground provided for by this ordinance, provided that said railroad company shall be bound to maintain that portion of the neutral ground which is occupied by the public tracks provided for by this ordinance, only as long as said public tracks are not used by other railroad companies or by the public and thereafter shall be obliged to maintain only that half of said neutral ground upon which the tracks provided by this ordinance for said railroad company, are laid. All intersections of streets shall be planked or at the discretion of said railroad company paved with material equally good, or better, in the opinion of the City Engineer, between
47 the tracks, between the rails and a sufficient distance on each side of the tracks to provide a safe and easy approach to and a crossing over said tracks, said planking or other pavement to be on lines and levels to be established by the City Engineer, and all construction work of every character to be done subject to the approval of the City Engineer. That all construction work shall be commenced within six months from the date of the acceptance of this ordinance, as hereinafter provided, by the Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns, and shall be completed within eighteen months after said date, and that

until said tracks and other construction work is finally completed the grant of track privilege made by this ordinance to said Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns shall have no legal force or effect, any delay resulting from legal proceedings to be deducted from the time fixed by this ordinance for the beginning and completing of construction work.

SECTION 13. Be it further ordained, etc., That the said railroad company, its lessees, successors and assigns shall not discriminate at any time, illegally or unjustly against the City of New Orleans.

SECTION 14. Be it further ordained, etc., That said railroad company, its lessees, successors and assigns shall be bound to switch or belt without unreasonable delay over said tracks Nos. 1 and 2 and over all other tracks laid in the public streets or public places, along the river front now operated or which may be hereafter operated, owned, controlled or leased by said railroad company, its lessees, successors and assigns except into the private property or terminals of said railroad company, its lessees, successors and assigns, for a reasonable compensation not to exceed a maximum charge of $1.50 per car, their own cars, and the cars of any other railroad company now operating or which may hereafter operate a line of railroad within the City of New Orleans, also cars belonging to individuals; when such service shall be requested, and no unjust discrimination shall be made between different companies or individuals entitled to and requesting such service; provided, that said railroad
48 company, its lessees, successors and assigns shall not be obliged to switch cars or other railroad companies for a less sum than other railroad companies charge for a similar service, until such time as other railroad companies operating in the City of New Orleans agree with the City of New Orleans upon a fixed switching or belting charge.

SECTION 15. Be it further ordained, etc., That the main railroad tracks of said companies, provided for by this ordinance, may be used for freight and passenger cars and trains drawn by steam engines or other motive power at the discretion of the said railroad company, its lessees, successors and assigns.

SECTION 16. Be it further ordained, etc., That the use in this ordinance, of the words "Expropriation or purchase" shall not be interpreted or construed so as to prevent the acquisition by the City of New Orleans or the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors or assigns, of property for levee or street purposes by modes other than expropriation or purchase.

SECTION 17. Be it further ordained, etc., That all ordinances or parts of ordinances in conflict with the provisions of this ordinance be, and the same are hereby repealed.

SECTION 18. Be it further ordained, etc., That this ordinance shall take effect only after it has been, in its entirety, accepted by the Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns, by notarial act before the City Notary, and that if said acceptance by said railroad company of this ordinance is not made within 60 days from the promulgation of this ordinance — shall become, in all its parts, null, void and of no effect.

Adopted by the Council of the City of New Orleans, February 28, 1899.

W. R. BRASHEAR,
Clerk of Council.

Approved March 1st, 1899.

W. C. FLOWER, *Mayor.*

A True copy:

R. L. TULLIS,
Secretary to the Mayor.

49 Clerk's Office, City Council, New Orleans.

CITY HALL, November 27th, 1912.

I hereby certify that the above is a true and correct copy of Ordinance No. 15,080 Council Series, as officially promulgated, and on file in ordinance book in my office.

(Signed) GEORGE FERIER, JR.,
Clerk of Council.

50 *Waiver of Citation of Appeal.*

Filed March 10th, 1914.

United States District Court, Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Waiver of Citation of Appeal.

An appeal having been taken by the appellants to the Supreme Court of the United States in the above numbered and entitled cause, service of citation of appeal and citation of appeal are hereby waived.

(Signed) WYLIE M. BARROW,
Assistant Attorney General, Attorney and Solicitor for C. L. De Fuentes, W. L. Foster, and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana, Defendants in Error.

51 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify, that the foregoing 50 pages contain and form a full, complete, true and perfect transcript of the Record, Assignment of Error- on Appeal, and Proceedings in the case of the Illinois Central Railroad Company versus C. L. De Fuentes, W. L. Foster, and Overton Cade, Commissioners and members of the Railroad Commission of Louisiana, No. 49 of the Docket of the Baton Rouge Division of the late United States Circuit Court, Eastern District of Louisiana, (made in accordance with the Præcipe for Transcript, copied therein).

Witness, my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 16th day of March, A. D. 1914.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

Endorsed on cover: File No. 24,135. E. Louisiana D. C. U. S. Term No. 423. Illinois Central Railroad Company, appellant, vs. C. L. De Fuentes, W. L. Foster, and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana. Filed March 30th, 1914. File No. 24,135.

Supreme Court of the United States, October Term, 1914.

No. 423.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,

vs.

C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana, Appellees.

It is hereby stipulated and agreed by and between the undersigned counsel for the Appellant and Appellees, respectively, that:

Since the printed transcript of the record in this case does not contain the order granting an interlocutory injunction signed by United States Circuit Judge Charles Parlange, the 25th day of February, A. D. 1904, at New Orleans, Louisiana, and the certified copy of Order No. 295 of the Railroad Commission of Louisiana, attached to the original answer of the defendants as a part thereof and marked "Exhibit A," therefore, copies of these documents are supplied herewith and may be used by either plaintiffs or defendants in their briefs and arguments before the court and considered by the court.

GUSTAVE LEMLE,
Attorney for Appellant.
WYLIE M. BARROW,
Assistant Attorney General,
Attorney for Appellees.

Decree Granting Injunction Pendente Lite.

Entered and Filed February 25th, 1904.

United States Circuit Court, Eastern District of Louisiana.

No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY

vs.

C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, Commissioners and Members of the Railroad Commission of Louisiana.

In the Matter of the Rule Taken by Complainant on Defendants for an Injunction Pendente Lite.

This cause came on to be heard on the Twentieth day of February, 1904.

Present: Gustave Lemle, Esq., Counsel for Complainant, and Hon. Walter Guion, Attorney General of the State of Louisiana, Counsel for Defendants.

And the Court after hearing Counsel for both Complainant and Defendants, and after considering the sworn allegations of the Bill of Complaint, and being of the opinion that Complainant is entitled to an injunction pendente lite as prayed for:

It is ordered, adjudged and decreed that a writ of injunction be issued out of and under the seal of this Court, addressed to C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, restraining them, and each of them, from in any manner enforcing or attempting to enforce the Rule No. 295 of said Railroad Commission of Louisiana heretofore entered on the 7th day of August, 1903, against Complainant; this injunction to continue in force during the pendency of this suit, or until the further orders of this Court.

Dated at New Orleans, in the Eastern District of Louisiana, this 25th day of February, A. D. 1904.

(Signed) CHARLES PARLANGE,
U. S. Judge.

(Copy.)

Order No. 295 of the Railroad Commission of Louisiana, Marked Exhibit "A," Made Part of Defendants' Answer, and Referred to Therein.

Filed October 8th, 1904.

Railroad Commission of Louisiana, Baton Rouge.

Order No. 295.

At a general session of the Railroad Commission of Louisiana, held at its office in Baton Rouge, Friday, August 7th, 1903, the following general rule was adopted:

Application of Car Service Rules.

No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.

All tariffs for the "service" of switching cars in the State of Louisiana shall be filed with the Commission within thirty days from the date of this order, and all the Commission's rules and orders relative to rates, and changes in rates, will also apply to switching charges.

Baton Rouge, Louisiana, August 8, 1903.

By order of the Commission.

C. L. DE FUENTES, *Chairman.*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

Attest:
A true copy:
[SEAL.] (Sig.) W. M. BARROW, *Secretary.*

(Copy.)

UNITED STATES OF AMERICA:

United States District Court, Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify the foregoing to be a true copy of the decree granting injunction pendente lite, Entered and filed February 25th, 1904, and of the order of the Railroad Commission of Louisiana, No. 295, Marked Exhibit "A," made part of Defendants' Answer and referred to therein, filed October 8th, 1904, in the case of the Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster, and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, No. 49 of the Docket of the late United States Circuit Court, Baton Rouge Division.

Witness, my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 21st day of December, A. D. 1914.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

[Endorsed:] 423/24135. No. 49. (Late Circuit Court.) U. S. District Court. Eastern District of Louisiana, Baton Rouge Division. Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana. Copy of decree granting injunction pendente lite, and of order No. 295, of the Railroad Commission of Louisiana.

[Endorsed:] File No. 24,135. Supreme Court U. S. October term, 1914. Term No. 423. Illinois Central Railroad Co., Appellant, vs. C. L. De Fuentes et al., etc. Stipulation as to use of papers omitted from transcript of record. Filed December 26, 1914.

Supreme Court of the United States

OCTOBER TERM, 1914

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

VS.

C. L. DE FUENTES, W. L. FOSTER, AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA.

NO. 423

MOTION TO ADVANCE

And now come C. L. De Fuentes, W. L. Foster and Overton Cade, through their successors, Shelby Taylor, B. A. Bridges, and John T. Michel, as commissioners and members of the Railroad Commission of Lousiiana, respondents in the above named and numbered cause, by Wylie M. Barrow, their solicitor, and move to advance for argument, on the docket

of the court, the appeal taken herein by the Illinois Central Railroad, appellant, upon the following grounds:

I.

That this is a case involving the right of the Railroad Commission of Louisiana to fix reasonable rules and regulations governing the switching of cars by the Illinois Central Railroad, appellant, in the City of New Orleans, Louisiana, which has been decided in favor of appellees in the United States District Court for the Eastern District of Louisiana.

II.

That there is pending against the Railroad Commission of Louisiana and its members, respondents herein, an injunction preventing them from exercising any jurisdiction or control over the switching charges of the Illinois Central Railroad in the City of New Orleans, Louisiana.

III.

That the issues involved are of great public importance to shippers in the City of New Orleans, and generally in the State of Louisiana.

Wylie McBurney

Assistant Attorney General, Solicitor for Railroad Commission of Louisiana, et al, Appellees.

Office Supreme Court, U. S.
FILED
DEC 15 1914
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1914.

No. 423

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. I. DEFUENTES, W. L. FOSTER AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT.

ROBERT V. FLETCHER,
BLEWETT LEE,
Attorneys for Appellant.

HUNTER C. LEAKE,
GUSTAVE LEMLE,
Of Counsel.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1914.

No. 423

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. I. DEFUENTES, W. L. FOSTER AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

On August 7, 1903, the Railroad Commission of Louisiana adopted a rule or order, No. 295, which reads as follows:

> "No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are to be loaded with freight to be shipped out of the state, or are loaded with freight shipped into the state. All tariffs for the 'service' of switching cars in the State

> of Louisiana, shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and changes in rates, will also apply to switching charges."

This order was duly promulgated in the official journal of the Commission on August 11, 1903. At the request of the appellant a rehearing was granted, but the Commission declined to disturb the order, thereby leaving the same in effect. Thereupon, the appellant filed a bill in equity in the Circuit Court of the United States for the Eastern District of Louisiana, making the members of the Railroad Commission of Louisiana parties defendant and praying for an injunction to restrain the members from enforcing this order and for general relief. In this bill it was averred that the appellant was a common carrier of interstate freight, operating a railroad through quite a number of states, and that this order of the Commission was invalid for the following reasons:

1. Because it violates the due process clause of the Fourteenth Amendment in that its effect was to compel appellant to allow other railroads, its competitors, to use the terminal facilities of appellant located in the City of New Orleans, and because, if enforced, it would deprive appellant of the opportunity to transport freight and collect therefor, and would prevent appellant from handling its own business for its own patrons promptly and economically.

2. Because the order violates the equal protection clause of the Fourteenth Amendment.

3. Because, in enacting the order, the Railroad Commission of Louisiana exceeded the powers conferred upon it by the Constitution of the State of Louisiana.

4. Because, in enacting the order complained of, the Commission acted arbitrarily and unreasonably.

5. Because the enactment of the order was an unconstitutional exercise of legislative power.

6. Because this order violates the contract clause of the Constitution of the United States.

7. Because the order violates the Act to Regulate Commerce, enacted February 4, 1887, and amendments thereto.

8. Because the order as passed violates the commerce clause of the Constitution of the United States.

It was further charged that, under the Constitution of Louisiana, from which the Louisiana Railroad Commission derives its powers, a penalty of not less than one hundred dollars nor more than five thousand dollars would be incurred for every violation of the Commission's order and that, unless the members of the Commission were restrained from enforcing the order, the appellant would be subjected to numerous suits for penalties and the jurisdiction of a court of equity was invoked in order to prevent a multiplicity of suits.

The Railroad Commissioners of Louisiana filed their answer, traversing most of the material averments of the bill of complaint, but admitting that the order had been entered; that the appellant was engaged in interstate commerce; that it owned certain terminal facilities at New Orleans, and that penalties would accrue if the order were disobeyed. This answer was filed on October 6, 1904. On April 18, 1913, there was filed in this case an agreed statement of facts, wherein it is stipulated:

1st. That the court has jurisdiction.

2nd. That the appellant has provided for itself at New Orleans certain switch and side tracks, warehouses and yards at a cost exceeding several hundred thousand dollars, without which the appellant could not carry on its railroad business.

3rd. That other railroad companies, competitive with appellant, serve New Orleans.

4th. That freight, both intrastate and interstate, brought to New Orleans by the appellant, is placed in loaded cars on numerous switch tracks of appellant, there to be unloaded by the consignees.

5th. That if order No. 295 shall stand, these switch tracks of appellant's will be used by other railroad companies, thereby causing more cars to pass over these switch tracks and thereby interfering with appellant's obligation to its own patrons.

6th. That when cars loaded with interstate and intrastate freight arrive at New Orleans, the consignee is notified that the freight is ready for delivery and thereupon the consignee usually calls, pays the freight bill of appellant and gives a switching order to the agent of the railroad company, by virtue of which the car is switched and placed on an industrial track or some terminal track for delivery.

7th. That the Illinois Central Railroad Company has filed with the Interstate Commerce Commission and the State Railroad Commission of Louisiana various terminal tariffs covering switching in the City of New Orleans, these tariffs not covering the charges for line-haul transportation but only the charge for executing the switching movement.

8th. That there are certain switch movements executed by appellant for which a switching charge is made, the movement being entirely within the limits of the City of New Orleans, the charges for which are shown in schedules filed both with the Interstate Commerce Commission and the Louisiana Railroad Commission.

9th. That the order, No. 295, was regularly adopted after full hearing and investigation and that no point is

made as to the regularity of the organization of the Commission.

Upon the bill and answer and the agreed statement of facts, the District Court of the United States, successor to the Circuit Court of the United States for the Eastern District of Louisiana, entered a final decree, dismissing the bill, stating in a brief opinion that this action was taken upon the authority of *Grand Trunk Ry. Co. et al. v. Michigan Railroad Commission,* 231 U. S., 457. From this decree, this appeal is prosecuted directly to the Supreme Court of the United States, upon the ground that the litigation involves questions arising under the Constitution of the United States.

The authority of the Louisiana Railroad Commission is derived from the following provisions found in the Constitution of the State of Louisiana:

> "Article 284. The power and authority is hereby vested in the Commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the different railroads steamboat and telegraph lines of this state, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the Commission to do so in special cases, to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by

having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The Commission shall have power to adopt and enforce such reasonable rules, regulations, and mode of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts, required or authorized by these provisions. They shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers; to take testimony under commission, and to punish for contempt, as fully as is provided by law for the District Courts.

Article 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate or other device, shall intentionally charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders or decisions of said Commission, such railroad, steamboat, or other water craft, express, telegraph, telephone or other company shall forfeit and pay to the state not less than one hundred dollars, nor more than five thousand dollars, to be recovered before any court of competent jurisdiction, at the suit of said Commission, at the domicile of the Commission, or of the company, or at the place where the complaint arises, at the option of the Commission, provided, that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, as provided for in Article 285 of this Constitution, no fine or penalty for disobedience thereto or disregard thereof shall be incurred until after said contestation shall have been finally decided by the courts, and then only for acts subsequently committed.

The power of the Commission shall affect only the transportation of passengers, freight, express matter, and telephone and telegraph messages, between points within this state, and the use of such instruments within this state."

ERRORS RELIED UPON (20).

The District Court of the United States for the Eastern District of Louisiana erred in failing to find that the said order is null and void, for each and all of the following reasons:

1st. Order 295 as entered by the Railroad Commission of Louisiana constitutes an interference with and a regulation of interstate commerce contrary to Section 8 of the Constitution of the United States.

2nd. Because the said order, No. 295, of the Louisiana Railroad Commission violates that certain act of Congress, known as the Act to Regulate Commerce enacted February 4th, 1887, and amendments thereto.

3rd. Because Congress, by an act of June 20th, 1906, commonly known as the Hepburn Act and amendments thereto, has taken over the whole subject of terminals, team tracks, switch tracks, sidings, etc., wherefore, the Railroad Commission of Louisiana has no authority to require appellant, an interstate carrier of freight and passengers, to switch cars tendered to it on its terminals in the City of New Orleans at rates to be fixed and established by the Louisiana Railroad Commission.

4th. The said order violates particularly that part of the Interstate Commerce Act commonly known as the Hepburn Law, providing, "But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to any carrier engaged in like business."

5th. Because the effect of the decision of the District Court is to disregard the fact that the Interstate Commerce Commission, by its numerous decisions and administrative orders, has taken over the whole subject of the use of terminals and the making of deliveries at terminals by interstate carriers in the receipt and delivery of freight moving in interstate commerce.

6th. Because the effect of the order is to require the appellant in effect to establish through routes for the handling of freight from competitive points, thereby compelling appellant to embrace in such through route substantially less than the entire length of its railroad, contrary to the provisions of the Act to Regulate Commerce enacted February 4th, 1887, and amendments thereto.

7th. Because the effect of the order in this case is to turn over to appellant's competitors the use of appellant's extensive and valuable terminals at New Orleans, thereby depriving appellant of the use of its property and of the property itself without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

BRIEF AND ARGUMENT.

I.

THE DISTRICT COURT OF THE UNITED STATES HAD JURISDICTION.

While some effort is made in the answer filed in this cause to challenge the jurisdiction of the District Court, yet there can be no question as to the jurisdiction, and for the following reasons:

(1) The jurisdiction is admitted in the agreed statement of facts.

(2) The District Court necessarily took jurisdiction in deciding the case upon the merits.

(3) Even if the jurisdiction had not been recognized in the way indicated, there can be no doubt, under the authorities, that the District Court of the United States had full jurisdiction to hear and determine the issues presented by the bill, answer and agreed statement of facts. This will readily appear from a brief review of some of the leading authorities. In

Reagan v. *Farmers' Loan & Trust Co.*, 154 U. S., 362,

there was presented to the court a case where a trustee in a trust deed executed by the railroad company, the trustee being a citizen of New York, filed a bill against the members of the Texas Railroad Commission, citizens and residents of the State of Texas, seeking to enjoin the Commission from administering and applying the statutes of the State of Texas creating the Railroad Commission and giving it certain authority. There was a specific attack in that case upon certain rates, rules and regulations prescribed by the Texas Commission. It was con-

tended that the suit could not be maintained in the Circuit Court of the United States for the reason that that court was without jurisdiction. After considering and disposing of the contention that this was a suit against the state and holding that it could not be so considered, the court uses this language:

> "Nor can it be said in such a case that relief is obtainable only in the courts of the state. For it may be laid down as a general proposition that whenever a citizen of a state can go into the courts of a state to defend his property against the illegal acts of its officers, a citizen of another state may invoke the jurisdiction of the Federal courts to maintain a like defense. A state cannot tie up a citizen of another state, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts. Given a case where a suit can be maintained in the courts of the state to protect property rights, a citizen of another state may invoke the jurisdiction of the federal courts (citing authorities). We need not, however, rest on the general powers of the federal court in this respect, for in the act before us, express authority is given for a suit against the Commission to accomplish that which was the specific object of the present suit.
>
> Section 6 provides that any dissatisfied 'railroad company or other party at interest may file a petition' 'in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant.' The language of this provision is significant. It does not name the court in which the suit may be brought. It is not a court of Travis County, but in Travis County. The language differing from that which ordinarily could be used to describe a court of the state, was selected apparently in order to avoid the objection of an attempt to prevent the jurisdiction of the federal courts. The Circuit Court for the Western District of Texas is 'a court of competent jurisdiction in Travis County.'"

Further along in the opinion, it is held that the Circuit Court of the United States could maintain its juris-

diction because there was a valid claim that the orders of the Texas Commission violated a contract between the railroad company and the state, and therefore presented a question arising under the Constitution and Laws of the United States. We mention this decision particularly, since it is shown here in the bill and admitted in the answer that the appellant is a citizen of the State of Illinois and the appellees are citizens of the State of Louisiana, thereby creating that diversity of citizenship which gives to the federal court jurisdiction.

In view of the discussion in the opinion just quoted as to the federal court being a court held in Travis County, Texas, it is worth while to call attention to the fact that Section 285 of the Louisiana constitution, dealing with the powers and authority of the Railroad Commission, thus provides:

> "If any railroad, express, telephone, telegraph, steamboat and other water craft, or sleeping car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rules, charge, order, act or regulation, adopted by the Commission, such party may file a petition setting forth the cause or causes of objection to such decision, act, rule, rate, charge, classification or order, or to either or to all of them, in a court of competent jurisdiction, at the domicile of the Commission, against said Commission as defendant, and either party to said action may appeal the case to the Supreme Court of the state, without regard to the amount involved, and all such cases, both in the trial and Appellate Courts, shall be tried summarily, and by preference over all other cases. Such cases may be tried in the court of the first instance either in chambers, or at term time; provided, all such appeals shall be returned to the Supreme Court within ten days after the decision of the lower court; and where the Commission appeals, no bond shall be required. No bond shall be required of said Commission in any case, nor shall advance costs, or security for costs be required of the Commission."

It will thus be seen that the Constitution of Louisiana provides for a court review and while there is some language in the provision, indicating that the reference is to the state courts, yet, upon familiar principles, and particularly upon the authority of the cases which will be cited later, it is evident that this section alone is sufficient to give jurisdiction to the federal courts. For, if there is a provision for a court review in any court of competent jurisdiction, the federal court, having jurisdiction by reason of diverse citizenship, will thereby be granted authority.

Again, the federal court's jurisdiction would be undoubted upon the authority of the Reagan case, just quoted, on the ground that there are bona fide and serious questions arising under the Constitution and Laws of the United States. These questions relate to the due process clause of the Constitution, the equality of treatment clause, the contract clause and the commerce clause, all of which will be fully considered a little later in this brief.

In the great leading case of

Smyth v. *Ames*, 169 U. S., 466,

the jurisdiction of the federal court, to set aside an order of the Nebraska Railroad Commission, was seriously challenged. The plaintiffs in that case were stockholders of the Union Pacific Railway Company and citizens of the State of Massachusetts; defendants were certain railroad corporations of Nebraska and certain officers of the state, charged with the duty of administering the laws of that state. The suit was to set aside certain provisions of the Nebraska statute, fixing rates. It was contended that the federal court could have no jurisdiction because there was a provision in the Nebraska statute, whereby questions of this character could be determined in the state

courts. Responding to the argument that there was a lack of jurisdiction, this court uses this language:

"We cannot accept this view of the equity jurisdiction of the Circuit Courts of the United States. The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a federal court, is not to be conclusively determined by the statutes of the particular state in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action. * * * But if the case in its essence be one cognizable in equity; the plaintiff—the required value being in dispute—may invoke the equity powers of the proper Circuit Court of the United States whenever jurisdiction atttaches by reason of diverse citizenship or upon any other ground of federal jurisdiction. * * *

Under the principles which in the Federal system distinguish cases in law from those in equity, the Circuit Court of the United States, sitting in equity, can make a comprehensive decree covering the whole ground of controversy and thus avoid the multiplicity of suits that would inevitably arise under the statute. The carrier is made liable not only to individual persons for every act, matter or thing prohibited by the statute, and for every omission to do any act, matter or thing required to be done, but to a fine of from one thousand to five thousand dollars for the first offense, from five thousand to ten thousand dollars for the second offense, from ten thousand to twenty thousand dollars for the third offense and twenty-five thousand dollars for every subsequent offense. The transactions along the line of any one of these railroads, out of which causes of action might arise under the statute, are so numerous and varied that the interference of equity could well be justified upon the ground that a general decree, according to the prayer of the bills, would avoid a multiplicity of suits, and give a rem-

> edy more certain and efficacious than could be given in any proceeding instituted against the company in a court of law; for a court of law could only deal with each separate transaction involving the rates to be charged for transportation. The transactions of a single week would expose any company questioning the validity of the statute to a vast number of suits by shippers, to say nothing of the heavy penalties named in the statute. Only a court of equity is competent to meet such an emergency and determine once for all and without a multiplicity of suits, matters that affect not simply individuals, but the interests of the entire community as involved in the use of a public highway and in the administration of the affairs of the quasi-public corporation by which such highway is maintained."

All these conditions mentioned by the court as conferring jurisdiction upon a federal court of equity apply in the instant case, are set up fully in the bill and practically admitted in the answer and the agreed statement of facts.

So, in *Ex parte Young*, 209 U. S., 123, a case which involved no question of diverse citizenship, it was held that the federal court has jurisdiction on account of the questions there involved, arising under the Constitution and laws of the United States. See, also,

McNeill v. *Southern Ry. Co.*, 202 U. S., 543.
Minnesota Rate Cases, 230 U. S., 352.

We also call attention to the rate cases from Arkansas, Kentucky and Indiana, decided in connection with the Minnesota Rate Cases.

Upon the authority of these and many other familiar cases, we think there can be no question as to the jurisdiction of the United States District Court.

II.

A SWITCHING MOVEMENT, WHEREBY INTERSTATE FREIGHT IS DELIVERED OR AN INTERSTATE MOVEMENT IS ORIGINATED IS ITSELF A MOVEMENT IN INTERSTATE COMMERCE.

There would seem to be abundant authority for the proposition that a switching movement constitutes interstate commerce if the commodities switched come from without the state or are destined to points without the state. Perhaps this proposition cannot be more clearly established than by a consideration of the case of

McNeill v. *Southern Ry. Co.*, 202 U. S., 543.

In that case it appears that the Greensboro Ice & Coal Company had a coal yard served by a private spur track some distance from the main track. On account of a dispute between the carrier and the coal company in regard to demurrage, the carrier declined to places cars consigned to the coal company on this private spur track, but announced that delivery would be made upon the public team tracks of the railroad company. The North Carolina Corporation Commission was appealed to and entered an order directing the Southern Railway to deliver all cars beyond its right of way on the private siding of the coal company. All these cars originated in states other than North Carolina. This court held that the switching movement in regard to which the controversy arose was a movement in interstate commerce, using this language:

> "The cars of coal not having been delivered to the consignee but remaining on the tracks of the railway company in the condition in which they had been originally brought into North Carolina from points outside of that state, it follows that the inter-

> state transportation of the property had not been completed when the Corporation Commission made the order complained of. *Rhodes* v. *Iowa*, 170 U. S., 412."

The court further held that this action of the Corporation Commission operated as a direct burden on and a direct regulation of interstate commerce and was therefore without validity.

It is clear that the subject of switching interstate shipments has been taken over by the Congress, since the provisions of the Interstate Commerce Act are applied to this subject by the very terms of the Act, and by the practical construction put upon the Act, both by the Interstate Commerce Commission and by the courts. The Act of February 4th, 1887, defined transportation as including "all instrumentalities of shipment or carriage." It was further provided in Section 1 of the Act, "All charges made for service rendered or to be rendered in the transportation of passengers or property as aforesaid or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

It is of course clear that the delivery of property coming into the City of New Orleans from a point outside of the State of Louisiana is not complete until this switching service is actually performed. This phase of the matter is covered by the sixth stipulation in the agreed statement of facts (Tr., 15), where it appears that upon proper order from the consignee, carload freight is switched without being unloaded, and placed on the industry track of the consignee. The original Act to Regulate Commerce, it will be noted, prohibits an unreasonable charge for the delivery of property and, of course, by other and

appropriate provisions of the Act, gives to the Interstate Commerce Commission, the Federal agency created by the Act, jurisdiction over such charges. It is further provided in the Act of 1887:

> "The term 'railroad,' as used in this act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract or agreement of lease."

By the Hepburn Law, transportation is defined as embracing, among other things, "all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported." It is further provided in this Act:

> "The term 'railroad,' as used in this act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease, and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein; and also all freight depots, yards and ground used or necessary in the transportation or delivery of any of said property."

It was by reason of these and similar provisions in the Act to Regulate Commerce that it was held by the Supreme Court that there was no authority in the States to regulate the furnishing of cars if those cars were required to move interstate shipments.

> *Chicago, R. I. & P. Ry. Co.* v. *Hardwick Farmers' Elevator Co.*, 226 U. S., 426.

The published reports of the Interstate Commerce Commission show that literally scores of cases have been decided by that body, involving rates for switching, switch-

ing practices, absorption of switching charges and every possible feature surrounding the delivery of freight by switching movement.

Waverly Oil Works Co. v. *Penn. R. R. Co. et al.*, 28 I. C. C., 621.

In re Switching Charges at Detroit, 28 I. C. C., 494.

People's &c. Co. v. *Grand Trunk Western R. R. Co.*, 27 I. C. C., 24.

Adams & Sons Co. v. *Vicksburg, S. & P. Ry. Co.*, 29 I. C. C., 52.

Lust & Merriam's Digest of Decisions of the Interstate Commerce Commission, pages 787 to 796, inclusive.

It would seem to be entirely too clear for extended discussion that, what is ordinarily known as a switching movement, whereby interstate freight is either originated or delivered, constitutes transportation in interstate commerce and is subject to the jurisdiction of the Interstate Commerce Commission, established under the commerce clause of the Constitution of the United States. Indeed, the statement of facts in this case shows that all charges for performing the switching, with which the order here under review deals, are contained in schedules filed as tariffs with the Interstate Commerce Commission, as required by the act of Congress.

It may be said, however, by the appellees, as it was argued in the court below, that this switching movement is not a part of the interstate transportation of freight; that it is a separate and independent movement performed at the instance of the consignee, of the same character as a purely local shipment, and is therefore subject to the regulating power of the State and not to that of the Nation. It may be said that the order has no applica-

tion to a movement of freight traveling on through rates, but only to such as has been legally delivered in the City of New Orleans and thereafter moved in switching service to some particular point where the consignee desires to receive it. It is of course possible to imagine a case in which delivery had been made so completely prior to the switching movement that there would arise a complete separation of the line-haul movement and the switching movement, whereby the switching movement might be properly characterized as intrastate. But the difficulty with the contention of the appellees in this regard arises from the very language of the order under review. The pertinent part of this order, bearing on the particular question now under discussion is:

> "Whether such cars are to be loaded with freight to be shipped out of the state or are loaded with freight shipped into the state."

The order provides that the switching charges established by the Louisiana Commission shall apply to cars which are to be loaded with freight to be shipped out of the state. In other words, cars placed for loading to points outside of the state are, by the terms of the order, made subject to the switching charge of the state commission. If, at the time these cars are loaded, it is known that the freight is destined to a point without the state, it takes on the character of interstate commerce from the very beginning; it is as much interstate commerce when it begins the switching movement as it is when it begins the line-haul movement. Commerce is not to be classified as interstate or state according to the way in which it is billed, as expressly held by the Supreme Court of the United States in the cases which will be referred to presently. That which determines the character of commerce as being interstate or intrastate is the intention and purpose of the shipper as to destination when

the freight begins its movement. Let us see if this is not the test applied by the Supreme Court of the United States in a line of familiar decisions.

In the very recent case of

Railroad Commission v. *Texas & Pacific R. R. Co.*, 229 U. S., 336,

where the controversy arose as to the character of shipments of staves loaded at a point in Louisiana, billed to New Orleans, the rail transportation being altogether within the State of Louisiana, it was held by the Supreme Court that this transportation was foreign and not local commerce for the reason that the staves were intended for export to foreign countries and were transported to New Orleans only for the purpose of further trans-shipment. After reviewing various cases supporting this conclusion, the court uses this language:

> "In those cases there was necessarily a local movement of freight and it necessarily terminated at the seaboard. But it was decided that its character and continuity as a movement in foreign commerce did not terminate nor was it affected by being transported on local bills of lading. The principles enunciated in the cases were that it is an essential character of the commerce, not the accident of local or through bills of lading, which determines federal or state control over it. *And it takes character as interstate or foreign commerce when it is actually started in the course of transportation to another state or to a foreign country.* The facts of the case at bar bring it within the ruling. The staves and logs were intended by the shippers to be exported to foreign countries, and there was no interruption of their transportation to their destination except what was necessary for trans-shipment at New Orleans." (Italics ours.)

Applying this test to the order in question, how can it be said that it does not affect interstate commerce when it provides in substance that the charges of the Louisiana

Commission shall apply to switching movement on cars to be loaded with freight to be shipped out of the state. That is to say, it applies to cars which the shipper knows are to be shipped out of the state at the time of the loading. Such a car must necessarily be launched upon an interstate journey when the switching movement begins. So in the case of

Texas & N. O. R. R. Co. v. *Sabine Tram Co.*, 227 U. S., 111,

it was held that lumber moving from an interior point in Texas to a Texas gulf port, where it was unloaded and reshipped on vessels to foreign ports, was foreign and not local commerce, the test applied being that such lumber was, from the beginning of the movement, destined for export. This was held in spite of the fact that the lumber was billed locally to the Texas port and changed ownership at the port. The court uses this language:

> "The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various character by the steps in its transportation would be extremely artificial."

In

Ohio Railroad Commission v. *Worthington*, 225 U. S., 101,

it was held that coal, originating at a point within the State of Ohio, shipped to a lake port on a rate which carried the coal on board the vessel, was an interstate rate and not a local rate and therefore beyond the power of the state regulating authorities to control. In reaching this conclusion, the court did not overlook the fact

that the coal was billed from one point in the state to another point in the state and the further fact that the coal is accumulated at the port in large quantities and trans-shipped after a considerable interval. It was held that what determined the character of these shipments was the fact that it was destined for trans-shipment at the port and had the character of interstate commerce at the time the transportation began.

In the case of

Southern Pacific Terminal Co. v. *Interstate Commerce Com.*, 219 U. S., 498,

a case dealing with the authority of the Interstate Commerce Commission to prescribe rates on cottonseed cake shipped from interior Texas points to Galveston and from there exported, it was held that this was a shipment in foreign commerce, the court using this language (527):

> "It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export and by their delivery to the Galveston, Harrisburg & San Antonio Railway, they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose. The case, therefore, comes under *Coe* v. *Errol*, 116 U. S., 517, where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have 'actually started in the course of transportation to another state or delivered to a carried for transportation.'"

The same principle is strikingly illustrated in the case of

United States v. *Union Stock Yards Transit Co. of Chicago*, 226 U. S., 286.

In that case there was a controversy as to whether the Chicago Junction Railway should be required to file its tariffs with the Interstate Commerce Commission, or in other words, whether the transportation performed by this railway was subject to the Act to Regulate Commerce. The opinion of the court shows that the tracks of the Junction Company were used by the trunk lines to connect their systems of railway and to deliver shipments originating without the state to the platforms of the Stock Yards Company and that large numbers of carload lots of freight from points without the state were placed on the receiving tracks of the Junction Company bearing transfer cards showing the destination of the cars; that the Junction Company delivers these cars either to the consignee or to the receiving track of the forwarding carrier. The charges of the Junction Company were ordinarily absorbed by the line-haul carrier. Less than carload lots of freight were handled in substantially the same manner. The Junction Company issued no bills of lading but the shipper received the bill of lading direct from the trunk line; or, if the bills of lading were issued by the Junction Company, they were in the name and for the account of the trunk lines. The court, in passing upon this arrangement, uses this language:

> "In view of this continuity of operation, the manner of compensation and the performance of services in connection with interstate transportation by railroads such as are described, are the Stock Yard Company and the Junction Company subject to the terms of the Act to Regulate Commerce and bound to conform to its requirements?
>
> The Interstate Commerce Act, as amended by the Hepburn Act, 34 Stat., 584, c. 3591, Sec. 1, applies to common carriers engaged in the transportation of persons or property from state to state wholly by railroad, and the term railroad is defined to include 'all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transpor-

tation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property'; and transportation is defined to include 'cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.'

That the service is performed wholly in one state can make no difference if it is a part of interstate carriage. 'The transportation of live stock,' said this court in *Covington Stock Yards Co.* v. *Keith*, 139 U. S., 128, 136, in treating of the duties of common carriers, irrespective of the Act to Regulate Commerce, 'begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered to the consignee.' In this connection, see *Coe* v. *Errol*, 116 U. S., 517; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S., 498. * * *

Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stock yards, load it upon cars and transport it for a substantial distance upon its journey in interstate commerce, under a through rate and bill furnished by the trunk line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal services rendered by the two companies, and complete its delivery to the consignee. They are common carriers because they are made such by the terms of their charters, hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems which use them. In *Union Stock Yards Co.* v. *United States*, 169 Fed. Rep., 404, Mr. Justice Van Devanter (while a circuit judge), speaking for the Court of Appeals, said (406):

'Its (the Stock Yards Company's) operations

> * * * include the maintenance and use of railroad tracks and locomotives, the employment of a corps of operatives in that connection, and the carriage for hire over its tracks of all live stock destined to or from the sheds or pens, which, in effect, are the depot of the railroad companies for the delivery and receipt of shipments of live stock at South Omaha. The carriage of these shipments from the transfer track to the sheds or pens and vice versa is no less a part of their transit between their points of origin and destination than is their carriage over any other portion of the route. True, there is a temporary stoppage of the loaded cars at the transfer track, but that is merely incidental, and does not break the continuity of the transit any more than does the usual transfer of such cars from one carrier to another at a connecting point. And it is of little significance that the stock yards company does not hold itself out as ready or willing generally to carry live stock for the public, for all railroad companies at South Omaha do so hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire, a part of the transportation of every live stock shipment which they accept for carriage to or from that point, including such shipments as are interstate.' "

We have quoted thus at some length from the opinion, because, in our judgment, the language quoted is really an argument in favor of appellant's contention in this case. The service described in the agreed statement of facts, to which the language of the order under attack is applicable, cannot be distinguished in principle from the movement which this court held to be interstate transportation in the Union Stock Yards case.

If it be said, however, that this case should be ruled by *Gulf C. & S. F. R. Co.* v. *Texas*, 204 U. S., 403, it is sufficient to say that this court, in the *Texas & N. O. R. Co.* v. *Sabine Tram Co. Cases, supra*, fully and carefully explained this case and distinguished it from the cases we have cited and upon which

we rely. It is perfectly clear that the so-called Texarkana case has no application to a shipment which was intended to be shipped beyond the state at the time it was loaded. It may be that switching movements, can be imagined, which are fully interstate movements, but if so, the order here under review has no application to such movements. By its very terms, it applies to cars which have come from out of the state and are being moved in switching service for final delivery and to cars being switched for further and interstate transportation. We say, therefore, that it is clear that the order applies to interstate commerce and is an attempt to regulate the same.

III.

THE ORDER, SINCE IT DEALS WITH INTERSTATE COMMERCE, IS INVALID AS ENCROACHING UPON THE EXCLUSIVE AUTHORITY OF CONGRESS.

It requires no citation of authority to establish the principle that the order of a state commission, attempting to control interstate commerce or fix a charge therefor is invalid as being beyond its power. This is the ordinary learning of the profession and will not justify extended argument. Indeed, this case furnishes a striking example of the evil of divided authority, which was pointed out in the

Abilene Case, 204 U. S., 426,

and other cases announcing the same principle. For, if the carriers must apply the charges fixed by the Louisiana Commission to switching services which are at the same time subject to the jurisdiction of the Interstate Commerce Commission, there would be that division of authority and that confusion which the court so luminously points out in the Abilene case.

IV.

THIS ORDER CANNOT BE CONSTRUED AS APPLYING ONLY TO INTRASTATE COMMERCE, AND THEREBY SAVED FROM INVALIDITY.

It will perhaps be argued, as it was argued in the court below, that it is the duty of this court to construe this order, No. 295, as applying only to intrastate commerce and having no effect whatever upon interstate commerce. Doubtless, the principle will be invoked that it is the duty of the court, in passing upon a statute, to hold it constitutional, if possible, and if there are portions of the statute which are unconstitutional and other portions in harmony with the Constitution, the invalid part should be separated from the valid part and only so much of the statute stricken down as presents clearly an instance of unconstitutional legislation. There can be no doubt about the rule, but the difficulty here lies in the fact that no such construction of this order is possible. Two considerations preclude such a disposition of the matter.

In the first place, the case was tried below upon issues which will not permit such a disposition of the case in this court. The answer filed by the defendant Railroad Commission of Louisiana does not proceed upon the theory that the order can be construed to apply only to intrastate commerce. That is to say, while of course there is a denial that the order does interfere with interstate commerce, yet the contention of the defendants, as shown by the answer, is that the switching movement, necessary to deliver or to initiate interstate movement of freight, is not in fact interstate commerce. In other words, issue is taken not upon the proposition that the switching of freight coming from or going beyond the state is covered by the order, but rather issue is taken upon the propo-

sition that such switching constitutes interstate commerce. This is clear from the following portions of the answer:

> "Twelfth. Defendants admit the truth of the allegation contained in complainant's bill of complaint, that under Section 8, Clause 3, of the Constitution of the United States, and the Act of the Congress of the United States to regulate commerce, passed on the 4th of February, 1887, and the amendments thereto, the United States have assumed and are exercising certain jurisdiction in matters relating to the regulation of interstate commerce. Defendants deny, however, the truth of the allegation contained in the bill of complaint, that the cars which may be affected by said order No. 295 are, at the time said order operates upon them, engaged in interstate commerce; further answering, defendants deny the truth of the allegation of said bill of complaint that the contents of such cars, when loaded, are, at the time such order operates upon them, interstate commerce, or that such order, if carried into effect, will be a regulation of interstate commerce and an infringement upon the jurisdiction of the United States, which defendants admit has the exclusive right to regulate interstate commerce; and that said order No. 295, is not, for reasons thus assigned by defendants, in violation of the constitution and laws of the United States, but that, on the contrary, the same was and is entirely within the power, authority and control of the Railroad Commission of Louisiana, to adopt and enforce."

It will thus be seen that it is the theory of the defendants in this case, and upon this theory the case was submitted to the court below, that the switching movement described in the agreed statement of facts is, while so being moved in switching service, not interstate commerce. The answer does not challenge the truth of the averment, that the order, by its scope, includes cars which have come from beyond the state and cars which are intended to go beyond the state. The contention rather is that the switching of cars which have come into the state and are

being delivered beyond the rails of the railroad company moving them in and cars which have been loaded with interstate freight being switched to a line-haul carrier, do not in fact constitute interstate commerce but constitute rather commerce wholly within the state and therefore subject to the regulating power of the state authorities. And to establish this contention, the learned counsel for the Railroad Commission of Louisiana directed his attention in the court below.

In the next place, it is not conceivable that the order here in effect can, by any possible construction, be limited to purely intrastate commerce. To put such a construction upon the language of the order would do violence to its plain, simple, unambiguous provisions. The order, by its terms, does not refer to intrastate commerce at all. It says that a carrier operating in the State of Louisiana must switch cars for any railroad with which it connects or any shipper or consignee at rates approved by the Commission, whether such cars are loaded with freight to be shipped out of the state or are loaded with freight shipped into the state. The order deals with only two classes of cars; one—cars which have come into the state and are being delivered by a switching movement, and the other—cars which are moving out of the state, the initial movement being in switching service. Both these classes manifestly embrace interstate commerce, and there is nothing left in the order which relates to purely intrastate commerce.

It must be remembered that this court is not, as it frequently is in passing upon cases of this character, furnished with any interpretation of the order by the highest court of the state, and this court is therefore called upon to construe this provision for itself. In construing it, it will of course put such a construction upon

it as will, if possible, save it from unconstitutionality; but, in order to accomplish this, this court will not read into the order something which is not there, nor will it modify plain and simple language, wresting it from its usual signification and put upon it a strained, if not impossible, interpretation, merely for the purpose of preventing an order from being held beyond the power of the body adopting it.

The rule which controls in matters of this sort has been referred to in the first

Employers' Liability Cases, 207 U. S., 463.

In that case it was urged that the court should hold that the statute was not meant to be applicable to intrastate commerce and should uphold it upon the ground that only interstate commerce was affected. After referring to the familiar rule that a statute should be upheld as constitutional, if possible, the court uses this language:

> "So far as the face of the statute is concerned, the argument is this, that because the statute says carriers engaged in commerce between the states, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words 'any employe' as found in the statute should be held to mean any employe when such employe is engaged only in interstate commerce. But this would require us to write into the statute words of limitation and restriction not found in it. * * * The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear it is, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the

> illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated."

It may be contended here that the legal should be separated from the illegal part but the difficulty about doing so is that there is no legal part of this order to separate from the other. The order deals only with two classes of switching movement, both of which, by the very terms of the order, expressly relate to commerce which must be interstate in its character. A valuable case upon this branch of the question is that of

> *Illinois Central R. Co.* v. *McKendree*, 203 U. S., 514.

In that case, there was under attack an order made by the Department of Agriculture, relating to the handling of infected cattle. The court held that this order was invalid because it applied to cattle moving intrastate as well as cattle moving interstate. This language is used:

> "The terms of order 107 apply to all cattle transported from the south of this line to parts of the United States north thereof. It would therefore include cattle transported within the State of Tennessee from the south of the line as well as those from outside of that state; there is no exception in the order, and in terms it includes all cattle transported from the south of the line, whether within or without the State of Tennessee. It is urged by the Government that it was not the intention of the Secretary to make provision for intrastate commerce, as the recital of the order shows an intention to adopt the state line, when the state by its legislature has passed the necessary laws to enforce the same completely and strictly. But the order in terms applies

alike to interstate and intrastate commerce. A party prosecuted for violating this order would be within its terms if the cattle were brought from the south of the line to a point north of the line within the State of Tennessee. It is true the Secretary recites that legislation has been passed by the State of Tennessee to enforce the quarantine line, but he does not limit the order to interstate commerce coming from the south of the line, and, as we have said, the order in terms covers it. We do not say that the state line might not be adopted in a proper case, in the exercise of federal authority, if limited in its effect to interstate commerce coming from below the line, but that is not the present order, and we must deal with it as we find it. Nor have we the power to so limit the Secretary's order as to make it apply only to interstate commerce, which it is urged is all that is here involved. For aught that appears upon the face of the order, the Secretary intended it to apply to all commerce, and whether he would have made such an order, if strictly limited to interstate commerce, we have no means of knowing. The order is in terms single and indivisible."

This case, in many of its aspects, is strikingly applicable here. We can say, as did the court in this case, that the order of the Louisiana Railroad Commission, by its very terms, applies to interstate commerce, and this court cannot, unaided by the construction of the state court, say that the Commission meant something other and different from what it said.

In addition to the language used in the order, which seems to be too plain to permit construction, we have the admission of the defendants by their answer that it was meant to be applied to interstate commerce, or what is the equivalent of such, an admission that the only dispute is whether this particular kind of switching is really interstate commerce. In

Allen v. *Pullman Company*, 191 U. S., 171,

there was presented to the court the question of whether

an occupation tax, levied by the State of Tennessee, was valid, it being contended by the Pullman Company that this was a tax upon interstate commerce. The act provided

> "That the rate of taxation on the following privileges shall be as follows: Sleeping cars. Each company doing business in the state, on each car per annum, $500.00."

This was held by the court to be a tax upon interstate commerce, this language being used:

> "In the latter act it is enacted for the privilege of doing business in the state. This business consists of running sleeping cars upon railroads not owning the cars and is precisely the privilege to be paid for under the first act, neither more nor less. In neither act is any distinction attempted between local or through cars or carriers of passengers. The railroads upon which the cars are run are lines traversing the state, but not confined to its limits. The cars of the Pullman Company run into and beyond the state as well as between points within the state. The act in its terms applies to cars running through the state as well as those whose operation is wholly intrastate. It applies to all alike, and requires payment for the privilege of running the cars of the company, regardless of the fact whether used in interstate traffic or in intrastate. There is no decision of the Supreme Court of Tennessee limiting the act in its operation to intrastate traffic. It is true that the comptroller has sought to restrain the operation of the law by imposing the tax for two years upon cars running between Nashville and Memphis and between Nashville and Chattanooga for two years, and fixing one car in each year as the proportion of local business done on interstate cars for two years. But this action does not conclude the state in taxing for other years, and the action taken by the comptroller does not limit the terms of the law affecting interstate commerce."

See also:

Leloup v. *Mobile*, 127 U. S., 640.

United States v. *Reese*, 92 U. S., 214.

The Trade Mark Cases, 100 U. S., 82.
United States v. *JuToy*, 198 U. S., 253.
Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540.

The decision of this court cannot be affected by the admission of counsel, if such is made, that the order will not be sought to be applied to interstate commerce. The menace of the order is there. It assumes to regulate and fix charges for performing interstate switching. The Constitution of Louisiana provides a penalty for every disobedience of this order. It is admitted in the answer that, under the provisions of the Louisiana Constitution, creating the Railroad Commission, penalties accrue for disobeying the order of the Commission, and that these penalties would be sought to be recovered. Thus:

> "Sixteenth. Defendants admit that, unless prohibited from so doing by a court of competent jurisdiction, they would have undertaken to enforce said order No. 295, but defendants deny that the enforcement of said order could have extended beyond the imposition of such penalties or forfeitures as the Constitution of the State of Louisiana prescribes."

As a matter of fact, the Constitution prescribes as a penalty a forfeiture of not less than one hundred dollars nor more than five thousand dollars for each violation of any of the orders of the Commission. If the order is upheld by this court, it will mean nothing less than that a penalty will be sought to be enforced by the Commission every time the appellant declines to switch a car moving in interstate commerce at the rate fixed by the Louisiana Commission, whatever that rate may be.

It may be argued here, as it was in the court below, that the action of the District Court finds support in the case of

Hampton v. *St. L., I. M. & S. R. Co.*, 227 U. S., 456.

However, that case means no more than that this court will adopt whatever construction of a state statute is put upon it by the highest court of the state. In that case, there was a finding by the State Railroad Commission that the railroad had refused to furnish cars to persons operating coal mines in the State of Arkansas and had discriminated in its distribution of coal cars among different operators. The order was attacked solely upon the ground that the act of the Arkansas legislature, authorizing such action by the Commission, was unconstitutional as regulating interstate commerce. The pertinent portions of this act were as follows: By Section 1 it was provided:

> "That, when a shipper makes a written application to a station agent of a railroad company for a car or cars to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of freight and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock A. M. the day following such application."

In the seventeenth section of the act, in an entirely separate paragraph, far removed from the one just quoted, it is provided:

> "Interstate railroad shall furnish cars on application for interstate shipments, the same in all respects as other cars to be furnished by intrastate railroads under the provisions of this act."

Manifestly these provisions are separable and one could be held invalid without in any way affecting the other. However, the important thing to remember about this case is that, prior to its decision, the highest court in the State of Arkansas, in the case of

> *Oliver* v. *Chicago, R. I. & P. R. R. Co.*, 89 Ark., 466,

had decided that this act did not relate to interstate com-

merce but was meant to provide an elaborate scheme for the regulation of intrastate railroad traffic. This court had no difficulty in setting aside that part of the seventeenth section referring to interstate commerce, but held that, in view of the decision of the Supreme Court of Arkansas, construing the act, the elimination of this invalid part did not affect the remaining portions of the act. But, in the case at bar, only one order is under consideration and this order applies not at all to intrastate commerce but, by its express terms, only to interstate commerce. We therefore insist that no construction can be put upon this act which will save it from invalidity.

V.

THE ORDER IF AFFECTING INTERSTATE COMMERCE IS INVALID NOT ONLY ON FEDERAL GROUNDS BUT BECAUSE IT VIOLATES THE CONSTITUTION OF LOUISIANA.

We announce this proposition and submit it without further argument, in view of the concluding sentence of Article 286 of the Louisiana Constitution, which provides:

> "The power of the Commission shall affect only the transportation of passengers, freight, express matter and telephone and telegraph messages between points within this state and the use of such instruments within this state."

Manifestly this was intended to negative the idea that the Louisiana Railroad Commission could do anything touching interstate commerce. If our previous argument is valid, that this order does apply to interstate commerce, manifestly the Louisiana Commission transcended the authority conferred upon it by the Constitution of Louisiana.

VI.

THE DECISION OF THE COURT BELOW BASED ON GRAND TRUNK RY. COMPANY V. MICHIGAN RAILROAD COMMISSION.

The court below dismissed the bill with the following brief memorandum opinion:

> "This case has remained on the docket long enough for the Supreme Court to indirectly decide it. See *Grand Trunk Ry. Co.* v. *Michigan Railroad Commission*, decided Dec. 8th, 1913."

It is therefore proper that we should consider this case, which will be found reported in 231 U. S., 457.

A careful examination of the facts and principles considered in this case indicates that it has no bearing whatever upon the case at bar, in so far as the instant case deals with the commerce question. The decision in the Grand Trunk case may be of some value and have some relevancy with respect to certain questions raised by the bill and answer, but it has no application whatever to the contention that the order of the Louisiana Commission undertakes to regulate interstate commerce. There was no interstate commerce question in the Grand Trunk case. The opinion of the Supreme Court dismisses this aspect of the matter in this language:

> "It is contended that the order is an interference with interstate commerce. The contention is premature if not without foundation. * * * We have seen from the statement of facts that the first concern of the Grand Trunk was the right to charge what it pleased or discriminate between the services. Inconvenience to its interstate business seems to be an afterthought. Besides, the fact of inconvenience is disputed. It is charged, it is true, in an affidavit filed by appellants; but there was a counter-affidavit and it was averred that the interchange of traffic required by the legislature of the state did not im-

pede interstate business, but, on the contrary, facilitated it and intrastate commerce, and relieved, not caused, congestion on the tracks of the various railroads in the city."

This reference in the opinion of the court can best perhaps be understood by referring to the decision of the court below, as it appears in 198 Fed., 1009. We there find that the order of the Michigan Commission did not, by its terms, in any way purport to regulate the movement of interstate commerce. The only interstate commerce question which complainant raised in the case grew out of the contention that, if the order of the Railroad Commission was enforced as to intrastate commerce, it would thereby cause the terminals of the railroad company to be congested with state commerce to the detriment of interstate commerce. This is made clear by the following excerpt from the opinion of the District Court:

"The alleged violation of the commerce clause of the federal Constitution rests upon the argument that the enforcement of the statute and the orders referred to will necessarily result in congesting the terminal facilities of complainants, and thus make it impossible for them to carry on interstate business without seriously delaying and interfering with such commerce. The statute does not embrace interstate commerce. It is confined to intrastate business. It has been so construed by the Supreme Court of Michigan. *Mich. Central R. R. Co.* v. *Michigan Railroad Commission, supra.* The statute cannot be said to interfere with interstate commerce unless such is its direct, immediate, and necessary effect. *Louisville & Nashville R. R. Co.* v. *Kentucky*, 161 U. S., 677, 701, 16 Sup. Ct., 714, 40 L. Ed., 849; *Louisville & Nashville R. R. Co.* v. *Kentucky*, 183 U. S., 503, 518, 22 Sup. Ct., 95, 46 L. Ed., 298. It is not, and cannot be, claimed that such effect results as matter of law; that is to say, it can only result because and when it is established by proofs that such is in fact the direct and necessary result of the en-

> forcement of the act and the orders of the Commission. What has already been said respecting the congestion of complainants' existing terminals, in considering the question of due process, is equally pertinent to the objection of interference with interstate commerce."

We thus see that the proceeding had no aspect whatever towards subjecting interstate commerce to direct regulation. The only argument was that interstate commerce would be interferred with because the terminal facilities of the railroad would be filled up with intrastate commerce. It was in view of this argument that this court makes its reference to the dispute as to inconvenience and congestion. Obviously this case throws no light whatever upon the question of whether the order of the Louisiana Commission is a regulation of interstate commerce.

VII.

THE EFFECT OF THE ORDER OF THE COMMISSION IS TO DEPRIVE THE APPELLANT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

In order to represent the situation graphically, instead of in words only, there has been attached to the brief blueprints showing:

1st. The location of the Illinois Central Railroad in New Orleans.

2nd. Its principal competitors, having their own terminals at New Orleans, and in the cities of Cincinnati, Louisville, Chicago, St. Louis and Memphis.

These cities are important, not only as originating traffic, but as gateways through which traffic flows along the lines indicated in the diagram. These blueprints show nothing except such matters as the court would judicially

notice upon appeal from the United States District Court at New Orleans.

Michigan Central R. R. v. *Powers*, 201 U. S., 245, 300 (1906).

State v. *Mo. Pac. Ry. Co.*, 212 Mo., 658; s. c., 111 S. W., 500, 504 (1908).

Goodman v. *Heilig*, 157 N. C., 6; s. c., 72 S. E., 866, 36 L. R. A. (N. S.), 1004.

L. P. Worden & Son v. *Cole*, 74 Kan., 226; s. c., 86 Pac., 464, 465 (1906).

Gulf, Colorado & Santa Fe R. Co. v. *Texas*, 72 Tex., 404; s. c., 1 L. R. A., 849, 852 (1888).

The Illinois Central Railroad Company has succeeded to the ownership of one of the oldest lines entering New Orleans. The act incorporating the New Orleans, Jackson & Great Northern Railway Company is in the Laws of Louisiana of 1853, page 109. The development of the property has extended along practically the whole of the river front of the city, and it surrounds the principal part of the city with a belt, along which are located yards, depots, spurs, sidings, industrial tracks, team tracks and the enormous shipping facilities known as Stuyvesant Docks. These facilities are considered superior to those of any other line entering New Orleans and are very much superior to the terminals of the lines which have entered the city at a comparative recent date, some of which are very poorly equipped. The practical operation of the order of the Commission will be that all the terminals of the Illinois Central Railroad Company at New Orleans will be thrown open to the use of any carrier, competitive or otherwise, which is willing to absorb the switching charge which the Commission prescribes, something carriers will undoubtedly be delighted to do, as any com-

pany would gladly avail itself of the aid of the Government to exploit the terminals of its competitors in this wise. The Illinois Central Railroad Company does not regard, however, its competitors in New Orleans as being in position to make adequate return for the use of its terminals in this way. If it did, undoubtedly reciprocal arrangements would be made. Concealed behind this innocent looking order of the Commission is an adventure of enormous significance, by which the fruits of the foresight, self-denial and careful investment of the Illinois Central Railroad Company and its predecessors in the acquisition of terminals at New Orleans, are to be shared with all comers. If the order is valid, the inducement for the development of terminals is taken away, and those who enter the railroad vineyard at the eleventh hour will receive the same penny as those who bore the burden and heat of the day, or, to choose a more accurate simile, the pennies which have been accumulated by the Illinois Central Railroad Company and its predecessors during some sixty years, are to be equally divided between itself and the other railroad companies of the city.

The position taken by the Illinois Central Railroad Company at New Orleans is similar to that taken by the Louisville & Nashville Railroad Company at Louisville, and the Pennsylvania Railroad Company at Pittsburgh, whose terminals enjoy a similar pre-eminence, and indeed this attitude on the part of railroad companies which have good terminals, as to switching shipments coming from competitive points, is general throughout the country.

In the case of *Louisville & Nashville Railroad Company* v. *Central Stock Yards Company*, 212 U. S., 132, 145 (1909), by the judgment of the court below in construing certain passages in the Constitution of the State of

Kentucky, a railroad company was required to receive at the Central Stock Yards at Louisville and to "transfer, switch, transport and deliver the live stock" consigned to anyone at the Bourbon Stock Yards, in the same city, "the shipment which originates at the Central Stock Yards." (141) In considering this portion of the order, the court said (144-145):

> "There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville and Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed special liability, but upon the broad ground that the state constitution requires it and lawfully may require it of a common carrier by rail. Therefore the judgment must be reversed."

In the recent case of *Grand Trunk Railway* v. *Michigan Railway Commission*, 231 U. S., 457, 471 (1913), a portion of the above passage is quoted in a unanimous opinion of the court by Mr. Justice McKenna, who dissented in the earlier case, with this comment:

> "It will be observed that the beginning of traffic was at the Central Stock Yards, the stock yards of

> the Southern, and was to be hauled by that road to its connection with the Louisville & Nashville, and by the latter from that point to the Bourbon Stock Yards, the stock depot of the latter railroad. The yards were the terminals of the respective roads for live stock delivery, and the case turned upon the point that the roads were competitive, and that the point of delivery was an arbitrary one, and that thereby the terminal station of one company was required to be shared with the other company."

This is just what the order of the Railroad Commission of the State of Louisiana undertakes to do with competitive traffic reaching New Orleans from such points, for example, as Cincinnati, Louisville, Chicago, St. Louis or Memphis, over railroads other than the Illinois Central. It covers all points of delivery, arbitrary or otherwise. The order commands the appellant to switch cars "for any other railroad *with which it connects.*" Under this order any shipper would have the right to require one railroad company to take a car which had not yet been delivered to him in its interstate movement, and switch it from the terminal of one of these other carriers to a desired location upon the terminal of the Illinois Central, although the latter company would have been most anxious to haul the freight all the way from the point of its origin, and under the new rule required by the Louisiana Railroad Commission the Illinois Central would yield up the advantage of the desired location on its terminal to the traffic of its competitor, without receiving anything for it, except a switching charge, to be fixed by the Railroad Commission of Louisiana.

A new railroad running to New Orleans need not be at any pains to acquire freight terminals at all. It need only connect its tracks with those of the Illinois Central outside the city, and then absorb a switching

charge to be fixed by the Railroad Commission of Louisiana to points upon the terminal of the Illinois Central within New Orleans. The Illinois Central might make an arrangement to do this voluntarily and would, perhaps, be glad to make such an arrangement on non-competitive business, but this would be a very different thing from being compelled to open its terminals to competitive business from points which it serves as well as its competitors. Why should any railroad company buy terminals or even rent them when the use of terminals belonging to others can be compelled for a mere carrying charge?

It may be observed that the Interstate Commerce Commission has, in a very similar situation, refused to require the Pennsylvania Railroad Company to throw open its terminals at Pittsburgh to other lines by establishing a mere switching charge which the competitors of the Pennsylvania could absorb and under which they could obtain a virtual use of its terminals. The Commission asserted the power to make joint rates from any point upon the terminals where traffic was received by the Pennsylvania Company to points upon the railroads of other companies, but refused to go beyond this. *Waverly Oil Works Company* v. *Pennsylvania Railroad Company et al.*, 28 I. C. C., 621 (December 3, 1913). This is one of the decisions of Commissioner Prouty, and is entitled to the respect due to his unusual experience and ability as an administrative officer. From a railroad point of view, this wise and conservative decision compares favorably with the order of the Louisiana Railroad Commission, which proposes absolutely no restriction upon switching movements in interstate commerce, but subjects them all, without more ado, to the control of the Commission and requires tariffs to be established

to cover them. The Louisiana Railroad Commission in its order, not only undertakes to regulate interstate commerce in a field which has been committed by Congress solely to the Interstate Commerce Commission, but undertakes to do so without obeying the wholesome limitations of the Interstate Commerce Act, which Congress, doubtless for constitutional reasons, has imposed by which the use of the terminals of one carrier cannot be given to another (Section 3), and by which even in case of through routing a railroad cannot be deprived of its long haul unless the result would be to make the through route unreasonably long as compared with another practicable through route (Section 15).

We therefore earnestly contend that this case should be reversed with directions to sustain the bill and set aside the order of the Louisiana Commission as invalid.

Respectfully submitted,

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